

MHST010035182017



Order Below Exh. 70 in RCA No. 344/2017

(Shobha Subhash Sonawane Vs. Tushant Raghunath Mane & Anr.)

This is an application filed by the appellant seeking remand of the suit to the Learned Trial Court for a fresh trial.

02. It is contended by the appellant that the present appeal is fixed for pronouncement of judgment on today itself. However, according to the appellant, proper evidence could not be adduced before the learned Trial Court. Therefore, it is necessary to remand the suit for a fresh trial and afford an opportunity to lead further evidence. Hence, the application be allowed.

03. Respondents filed their say on this application itself and strongly objected the application by contending that the contentions in the application are false and frivolous. The appellant/plaintiff was given full opportunity to lead evidence. Even the Cadastral Surveyor was appointed to find out any alleged encroachment. The Cadastral Surveyor found that there is construction in the property of the plaintiff. This fact has come on record. The plaintiff/appellant was represented by Advocate in the Ld. Trial Court and in the appeal the appellant was also represented by Advocate. The substantial arguments were

submitted. Today, the matter is kept for judgment. The appointment of new Advocate and new submission through him is unknown to law. Such type of submission would be against the principle of law and natural justice. Every time party cannot be allowed to make new submissions by appointing new Advocate. That would be unending process. If application would be allowed, respondents/defendants would suffer an irreparable loss. Therefore, application be rejected.

04. Heard both sides. Perused record and proceeding.

05. Upon consideration of the rival submissions of both sides and perusal of record, it reveals that the appellant/original plaintiff, being aggrieved by the judgment and decree dated 12.10.2017 passed by the learned 3rd Jt Civil Judge, Junior Division, Satara, in R.C.S. No. 397 of 2009, has preferred the present appeal. The appeal has been heard at length. Arguments on behalf of both sides have already been concluded and the matter is fixed for pronouncement of judgment on today itself.

06. The sole ground urged in the application is that the appellant could not adduce proper evidence before the Ld. Trial Court. However, it is well settled that a party who had sufficient opportunity to lead evidence before the Ld. Trial Court cannot seek remand merely because it failed to produce the evidence which it ought to have produced. Remand is not to be ordered as a matter of course. The power of remand is exercised scrupulously

only when the circumstances contemplated under law exist and when such remand is necessary for proper adjudication of the dispute.

07. In the present case, no satisfactory explanation is offered by the appellant as to why the alleged evidence was not produced before the Ld. Trial Court, despite having an opportunity to do so. The application is conspicuously silent regarding the nature of the evidence sought to be produced and the reasons preventing its production during trial. Mere assertion that proper evidence was not adduced cannot be a ground to set aside the entire trial and remand the matter for a fresh adjudication.

08. Furthermore, the present appeal is of the year 2017 i.e. more than 8 years old. The present matter is at the stage of arguments since the year 2024. Finally, the arguments commenced on 10.04.2026 and continued for further arguments on 17.04.2026, 23.04.2026 and 06.05.2026. The arguments of both sides completed on 11.06.2026. The appeal has already been finally heard and is posted for pronouncement of judgment today. At this stage, new Advocate for appellant appeared and filed this application, which is surprising and unwarranted. As such, the conduct on behalf of appellant to prolong the matter cannot be ruled out. At this stage, permitting remand on such ground would amount to granting a fresh opportunity to fill up the lacunae in the appellant's case, which is impermissible in law.

09. In view of the above discussion, this Court finds no merit in the application. The appellant has failed to make out any case warranting remand of the suit for a fresh trial. Hence, I proceed to pass the following order -

ORDER

- 1] Application (Exh.70) is hereby rejected.
- 2] The appeal shall proceed for pronouncement of judgment as scheduled.

Satara.
Date : 16.06.2026.

(A. S. Waghmare)
Principal District Judge,
Satara.