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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.653 OF 1990

1. Dashrath Sitaram Neel. Age 67 yrs.
2. Nagnath Janardan Neel, age 37 yrs.
3. Smt.Sheshabai Aba Neel, age 52 yrs.
4. Ramchandra Aba Neel, age 28 yrs.

All of Kondi, Tal.North Solapur,
Dist.Solapur. ... Appellants

Vs.

1. Baliram Vishnu Patil, age 60 years.
2. Hari Sitaram Neel, age 40 yrs.
3. Smt.Subhadrabai Janardan Neel,
age 62 years,
4. Smt.Kondabai Krishna Patil,
age 52 years.
5. Smt.Yeshodabai Balbhim Bhonsle,
age 40 years,

All of Kindi, Tal.North Solapur,
Dist. Solapur ... Respondents

Mr.S.M.Railkar i/b Mr.G.R.Rege Advocate for Appellants.
Mr.V.B.Rajure, Advocate for Respondent No.4.

CORAM : R. G. KETKAR, J.
DATE : 06th APRIL, 2015

Order :

. Heard Mr.S.M.Railkar, learned Counsel for the appellants
and Mr.V.B.Rajure, learned Counsel for respondent No.4 at length.

2. Mr.Rajure submitted that appellants No.1 to 4 along
with one Subhadrabai Janardan Neel had instituted Regular Civil

Suit No. 416 of 1979 for relief of joint possession with defendant No.2- Baliram Vishnu Patil. In the alternative, they claimed partition and separate possession. By the judgment and decree dated 15/12/1986, learned trial Judge dismissed the plaintiff's suit for joint possession in the suit land along with defendant No.2. Defendant No.2 – Baliram was directed to deliver possession of the entire suit land to the plaintiffs. It was also declared that defendant No.2 had acquired undivided interest of his vendor i.e. defendant No.1-Hari Sitaram Neel in the property and that he is entitled to take appropriate proceedings to have his interest ascertained by partition. Aggrieved by that decision, defendant No.2-Baliram preferred Civil Appeal No.120 of 1987. By the judgment and decree dated 12/01/1990, learned District Judge dismissed the appeal. The trial Court's decree was modified and substituted. The plaintiff's suit for joint possession with defendant No.2 was decreed.

3. Mr.Rajure submitted that defendant No.1-Hari had sold property to defendant No.2-Baliram. Defendant No.1-Hari died some time in May 2009. Defendant No.2 – Baliram died on 23/08/2002. However, their heirs and legal representatives are not brought on record. He submitted that having regard to the nature of the decree passed by the learned District Judge namely plaintiff's suit for joint possession with defendant No.2 is decreed, appeal now cannot be proceeded in the absence of heirs and legal representatives of

defendant No.2-Baliram.

4. As noted earlier, defendant No.1-Hari died in May 2009 and defendant No.2-Baliram died on 23/08/2002. As heirs and legal representatives of these defendants are not brought on record, appeal stood abated against defendants No.1 & 2. Having regard to the nature of the decree passed by the Appellate Court, appeal now cannot be proceeded in the absence of the legal representatives of defendants No.1 & 2. Hence, appeal is dismissed reserving liberty to the appellants to take appropriate steps, if so advised.

(R. G. KETKAR, J.)