

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.153 OF 2014

*(Bholenath Ramdas Aware and others Vs. Sandipan Gundiba Khadul (deceased thr. LRs)
Smt. Bhiwarabai Sandipan Khadul and others)*

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

Shri Surel S. Shah, Advocate for Appellants.

Shri D.W. Bhosale, Advocate for Respondent No.1A to 1C.

CORAM: R.K. DESHPANDE, J.

DATE: 22nd JULY, 2015.

Regular Civil Suit No.413 of 1993 was decreed by the trial Court 31.10.2001 and the operative portion of the judgment delivered by the trial Court is reproduced below:

- a] *The suit is decreed with costs.*
- b] *The Plaintiffs no. 1 to 4 are entitled for possession of ½ share in the suit land by partition.*
- c] *The collector or any gazetted sub-ordinate to him has to effect the partition of the suit land.*
- d] *A separate enquiry be held for the means profits.*
- e] *The decree be drawn up accordingly.*

The decree has been confirmed in appeal by the Lower Appellate Court which 04 of 2002 by the Lower Appellate Court by dismissing the appeal on 19.03.2004. The original defendants are before this Court in this second appeal.

The ground raised by Shri Shah, the learned counsel for the appellant is that during the pendency of suit itself, out of four plaintiffs, the plaintiff No.3 expired and therefore, the decree passed by the trial Court, as has been confirmed in appeal becomes nullity. He has relied upon the decision of the Apex Court in case of *N. Khosla v. Rajlakshi (dead) and others* reported in (2006) 3 SCC 605. It was a case where the non-applicant in the application filed in the Civil Court for making the award, a decree of the Court was dismissed. Such dismissal is maintained by the Apex Court. The respondent in the said application who was benefitted by the orders passed by all the Courts, expired. The Apex Court has held that neither the application nor the appeal abated. The decision therefore, is not an authority for the proposition that in a suit where one of the plaintiffs expires and decree is for declaration that all the plaintiffs together are entitled to $\frac{1}{2}$ share in the property, the suit abates in its entirety. If the legal representatives of the plaintiff No.2 are not added in a suit, it is open for them to adopt all such remedies to get benefit of the decree passed by the trial Court. Thus, no substantial question of law arises in this second appeal. The second appeal is dismissed.

In view of dismissal of the Second Appeal, Civil Application No.1261 of 2010 does not survive and it accordingly stands disposed of.

At this stage, the learned counsel for the appellant seeks continuation of the interim relief granted by this Court for a further period of six weeks. The interim relief is therefore, continued for a further period of six

weeks. It is made clear that the partition may go on however, the possession of the appellant shall not be disturbed for a period of six weeks after expiry of which the interim relief shall stand automatically dismissed without reference to the Court.

JUDGE