

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.393 OF 2010

(Adam Bandubhai Nadaf (Pinjari) since deceased thr. LRs. Bhai (Illahi) Adam Nadaf and ors. Vs. Malharrao Bhavanji Rajemahadik since deceased thr. LRs. Bhavanji Malharrao Rajemahadik and ors.)

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

Court's or Judge's orders.

Shri R.V. Bansode, Advocate for Appellants.

Shri R.G. Deshmukh, Advocate with Shri G.T. Kanchanpurkar, Advocate for Non-Applicants.

CORAM: R.K. DESHPANDE, J.

DATE: 13th JULY, 2015.

Regular Civil Suit No.45 of 1986 was decreed by the trial Court directing the defendants to give the plaintiff, vacant possession of the suit land. The trial Court recorded that the plaintiff has proved title over the suit property. It has been held that the plaintiff has proved that the suit properties were leased out by the elder brother Narayanji to the predecessor of the defendants, on 12.05.1997. The claim of the defendants of having purchased the suit property, has been rejected and the suit has been decreed. The Lower Appellate Court has also dismissed Regular Civil Appeal No.16 of 2003 on 11.03.2010. Hence, the original defendants before this court against the concurrent finding of fact.

The learned counsel for the appellants raised two points: (i) that the suit is decreed without proper description of the property, and (ii) the decree has been passed by the trial Court on the basis of false document. Both the points were not raised before the trial Court. Neither the trial Court

has framed an issue nor it was a ground raised before the Appellate Court in the memo of appeal. Therefore, the appellant had no occasion to meet this point. The finding of fact is a possible view of the matter which does not give rise to any substantial of law. The Second Appeal is dismissed.

In view of dismissal of the Second Appeal, Civil Application No.987 of 2010 does not survive and it accordingly stands disposed of.

JUDGE