

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No. 79 of 2004
Amrit v. Bhikaji and ors

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

Court's or Judge's orders.

None appears for appellant
 Mr R. D. Bhuibhar, Adv for respdt no.1
 Mr S. V. Sohoni, Adv for respdt no. 3(b)

CORAM : A. P. BHANGALE, J

DATED : 10th June 2015

1. None appears for appellant. Heard learned counsel for respondent no. 1 and respondent no. 3 (b). Perused the record.
2. Appellant has challenged judgment and decree dated 14.11.2003 passed by the 1st Appellate Court allowing appeal of respondents and setting aside judgment rendered by the trial Court which had decreed the suit of appellant/plaintiff.
3. Since according to appellant/plaintiff, defendants no. 1 and 2 Bhikaji and Sau Kanta sold the suit property to defendant no. 3 Deorao Tote and further it is noticed from record that during the pendency of these proceedings respondent/defendant no. 3 Deorao has died and no steps were taken by appellants to bring his legal representatives on record. Proceedings in appeal have thus abated as against

original defendant no. 3 Deorao vide order dated 18.3.2004.

4. Learned Advocate representing respondent cited ruling of this Court in **Pandurang Sadashio Patil v. Pandurang Chimnaji Patil** reported in **1983 Mh. L.J. 460**. There, a suit for specific performance of contract of sale and in the alternative for refund of earnest money was filed against two brothers. During the pendency of suit one of the brothers died and no steps were taken to bring his legal representatives on record within time. In that view of the matter, this Court held that interest of the two brothers was joint, indivisible and undefined. Consequently, on the death of one of them, the suit could not proceed either for specific performance or refund of earnest money in the absence of legal representatives of the deceased defendant. It is submitted that abatement of the suit was total for want of legal representatives of deceased defendant. The appellant remained absent.

5. No substantial question of law is raised in this appeal. Appeal is, therefore, dismissed. No costs.

JUDGE

joshi