

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

Second Appeal No. 97 of 2014
Ratanbee and ors v. Govind and ors

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

Court's or Judge's orders.

Mr R. J. Mirza, Adv for appellants
 Mr R. L. Khapre, Adv for respondent no.2

CORAM : A. V. NIRGUDE, J

DATED : 6th April 2015

1. Heard learned counsel for the parties. Appellants/defendants challenge concurrent findings of the Courts below that respondent/plaintiff was entitled to possession of suit land as owner thereof. The Courts below also held that the appellants/defendants had no concern to the land and yet they occupied it. It was all along their contention that their predecessor was tenant and in his capacity as tenant, he cultivated the land.

2. The issue of tenancy was referred to the Tenancy Court and it was held concurrently by two Authorities that there was no tenancy. It is thus clear that the plaintiffs/respondents could prove that appellants/defendants were merely trespassers.

3. Learned counsel for the appellants raised two points, viz. -

(1) He says that the original plaintiff, during

the pendency of suit, died and for about five years, the suit stood abated, but pending in the trial Court. After five years, an application was moved for bringing legal representatives of deceased plaintiff on record and the same was allowed. He suggested that such an application could not have been allowed and the suit could not have been revived.

This point was raised while the case was before the lower Court and the learned Judge there observed that the appellant/ defendant did not raise any objection when the application was moved and the same was allowed. Learned Judge rightly held that even after the death of original plaintiff, right to sue survived in favour of his legal representatives and, therefore, bringing them on record was necessary. In my view, delay in taking necessary steps would not really prove fatal.

(2) Learned counsel for appellants then suggested that his clients have gone to yet another Authority under the Tenancy Act seeking declaration that they are tenants etc.

In my view, such a proceeding may continue. Learned Judge of the lower Appellate Court also held that decrees for possession should not be disturbed even though some proceedings before the Tenancy Court are pending at the third level. I find no error on the learned Judge taking such recourse.

4. I found that there is no substantial question of law involved in this second appeal. Appeal is accordingly dismissed. No order as to costs.

JUDGE

joshi