

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

***SECOND APPEAL No. 735 of 2015
Along with
CIVIL APPLICATION NO. 1567 OF 2015
(For stay)***

Sou.Rohini Chandrakant Nandgaonkar .. Appellant - Applicant
Vs.
Sharad Virupakash Mahamuni & ors. .. Respondents

Mr.S.G.Deshmukh i/b Mr.Ramdas Shelke, for the Appellant-
Applicant.
None for Respondents.

***CORAM: N.M. JAMDAR, J.
Wednesday, 16 March 2016.***

PC. :

Heard learned counsel for the Appellant.

2. The learned counsel for the Appellant after arguing the matter for some time accepted the position that the finding of the Appellate Court that the suit filed by the Appellant was barred under Section 4 of the Bombay Revenue Jurisdiction Act, 1876, cannot be faulted. He submitted that the observations made by the Apex Court on the merits of the dispute between the Appellant and the Respondent No.1 will affect the Appellant in case the Appellant seeks to institute proceedings in the competent Court. It is not necessary to set aside or comment on these observations as regards the merits of the dispute between the Appellants and

Respondent No.1 as once the Appellate Court has come to the conclusion that the suit was not maintainable, which position is correct, it is obvious that any observations made in a suit, which was not maintainable will not operate as a res-judicata or will bind the parties when the parties institute proceedings in the competent Court.

3. In view of this position, no question of law arises. Second appeal is accordingly dismissed with above clarification. Civil Application is also disposed of accordingly.

(N.M.Jamdar, J.)