

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

SECOND APPEAL NO.181 OF 2016

Mr. Sadruddin Chiraquddin Inamdar ..Appellant/Orgn. Plaintiff

Vs.

Smt. Zubeda Shekhu Inamdar ..Respondent/Orgn. Deft.

....

Mr. P. N. Joshi for the appellant .

None for the respondent.

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CORAM : N.M. JAMDAR, J.

DATED : 17 MARCH 2016

P.C.:

. This Appeal is filed by the original plaintiff challenging the dismissal of Regular Civil Suit No.42/2008 by the learned Civil Judge, Junior Division, Jawhar on 9 July 2013 and dismissal of the Appeal No.179/2014 by the District Judge, Thane dated 26 June 2015.

2. The appellant filed the suit for a declaration that the marriage of the respondent with Babamiyan, brother of the appellant, is void and for a declaration that the respondent has no right in the properties of the said Babamiyan. The main contention of the appellant is that respondent had not taken valid divorce from her first husband Shaikh Hussain Datagir and, therefore, her

marriage with Babamiyan on 28 March 1983 was not a valid marriage. Both the courts have concurrently found that there was a valid separation of the respondent from her earlier husband. She had obtained *talaknama* on 8 December 1982. *Talaknama* issued by Qazi, Nasik was placed on record. Both the Courts also took into consideration entry in the ration card and birth record of the child to corroborate the said conclusion.

3. The learned counsel for the appellant contended that opportunity was not given to the appellant. However, it is not noted by the Appellate Court that such grievance was made. Therefore, it is presumed that the appellant did have opportunity to counter the said *talaknama*. Whether the respondent proved that she had taken valid divorce from her earlier husband is a question of fact. Both the Courts have considered the evidence and have rendered the factual finding. It is not possible to re-appreciate the evidence. No question of law arises. Second Appeal is accordingly dismissed.

(N.M. JAMDAR, J.)