

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Second Appeal No. 521 of 2002

Manohar Tukaramji Lalmunde v. Madhao Jamnadas and anr

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

Court's or Judge's orders

Shri M. P. Sagdeo, Advocate and Shri S. V. Sohoni, Advocate with him
for appellant
Shri B. N. Mohta, Advocate for respondent no. 1

Coram : R. K. Deshpande, J

Dated : July 13, 2016

In Regular Civil Suit No. 1312 of 1996, which was converted into Special Civil Suit No. 176 of 1998, the appellant who is the original plaintiff, claimed the reliefs as under :

(i) Declare that either the defendant no. 1 had no right to pay the rents to the defendant no. 2 during the Rent Control proceedings when the plaintiff was coming to Nagpur and that the defendant no. 2 had also no authority to accept the rent without knowledge and consent of plaintiff secretly and behind the back of this plaintiff.

(ii) The plaintiff be declared as sole owner of the suit property and that the defendant no. 1 be restrained from making payment of any alleged rent to defendant no. 2 and that the defendant no. 2 also be restrained from accepting or recovering any rent of the suit premises owned by this plaintiff and described in schedule attached herewith.

(iii) A decree for Rs. 17500/- towards the arrears of rent and notice charges etc., be also passed against both the defendants jointly, with interest on the said amount at Rs. 12 percent per month from the date of the suit till realization.

(iii-a) A decree for possession of the suit premises and described in schedule attached herewith the plaintiff against the

defendant no. 1 be passed. A decree for future mesne profit after enquiry under Order 20, Rule 12 be also passed against defendant no. 1.

(iv) Full costs be saddled against both the defendants.

(v) Any other relief that this Hon'ble Court deems fit be also granted."

Both the Courts have rejected the claim of plaintiff. The suit stands dismissed. Hence, the original plaintiff is before this Court in this Second Appeal.

The original defendant no. 2 who is the respondent no. 2 in this case died on 20.08.2007. The Registrar (Judicial) of this Court by his order dated 22.02.2008 dismissed the Second Appeal as abated against the respondent no. 2.

In spite of filing of the Pursis (St) No. 4556/16, stating that the defendant no. 2 was survived by two more sons and two married daughters, no steps are taken to bring their names on record.

In view of this, the question is, whether the appeal abates as a whole in the light of the reliefs claimed in the suit which are reproduced above.

Put up this matter tomorrow, 14.07.2016 at Sr. No. 1 in the Order Matters, so as to enable the learned counsel for the appellant to address on the question as to whether the appeal abates as a whole or not ?

JUDGE

14.07.2016 -

Learned counsel for the appellant has invited my attention to the decision of the Apex Court in the case of

State of Punjab vs. Nathu Ram reported in (1962) 2 SCR 636 and the decision of this Court in the case of **Lxmanrao Nikose v. Narayan Nikose & ors** delivered in Second Appeal No. 204 of 2000, decided on 8th July 2014. He seeks permission to withdraw the second appeal after taking instructions from his client who is personally present before the Court.

Shri B. N. Mohta, learned counsel appearing for respondent no. 1 submits that he does not have any objection if the appellant is permitted to withdraw the appeal unconditionally.

In view of this, the appellant is permitted to withdraw the second appeal. Dismissed as withdrawn.

JUDGE

joshi