

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

SECOND APPEAL NO.59 of 2016

Rekha w/o Sanjay Bole and ors.

-vs-

Panchfulabai wd/o Nathuji Wanjari and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. A. Radke, Advocate for appellants.

Shri A. M. Sudame, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : May 03, 2016

The original defendants have challenged the decree passed by the trial Court whereby the plaintiff has been held entitled for share in the suit property.

R.C.S. No.6 of 2006 was filed by the present respondents seeking partition of the suit property. R.C.S. No.333 of 2005 was filed by the present appellants seeking declaration with regard to ownership in respect of the suit property and for permanent injunction. Both the suits were consolidated. On the basis of common issues framed, the parties led common evidence. The trial Court decreed R.C.S. No.6 of 2006 holding the plaintiffs therein entitled to share in the suit

property. R.C.S. No.333 of 2005 came to be dismissed.

Against said adjudication, the present appellants filed R.C.A. No.234 of 2010 challenging the decree passed in R.C.S. No.06 of 2006. By the judgment dated 17/06/2014, said appeal has been dismissed.

Shri S. A. Radke, the learned counsel for the appellants submitted that the Appellate Court was not justified in dismissing the appeal filed by the present appellants. He submitted that the trial Court while decreeing the R.C.S. No.6 of 2006 failed to take into consideration the material evidence on record and therefore said suit could not have been decreed.

Shri A. M. Sudame, the learned counsel for the respondents submitted that against the common judgment passed by the trial Court on 21/08/2010, only one appeal had been filed. As the suits had been consolidated, it was necessary for the appellants to have filed a separate appeal challenging the dismissal of R.C.S. No.333 of 2005.

It is not in dispute that against the common judgment delivered by the trial Court, only one appeal came to be filed being R.C. Appeal No.234 of 2010. In

Premier Tyres Limited vs. Kerala State Road Transport Corporation AIR 1993 SC 1202, it has been held by the Honourable Supreme Court that the effect of non filing of appeal against the common judgment renders the other appeal filed to be not maintainable for being entertained on merits.

Considering the aforesaid position of law as the appellants had filed only one appeal though they were required to challenge the decrees passed in R.C.S. No.6 of 2006 and R.C.S. No.333 of 2005 separately, it would not be permissible to consider the validity of the judgment in R.C. Appeal No.234 of 2010.

In view of aforesaid legal position, the second appeal is liable to be dismissed. Same is therefore dismissed with no order as to costs.

JUDGE