

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 745 OF 2009
AND
CIVIL APPLICATION NO. 10848 OF 2009

Abhiman Bhau Gadekar

.. Appellant/
Applicant

Vs.

Sanjay Asuba Gadekar and others

.. Respondents

Mr. C.R. Deshpande, Advocate for the appellant / applicant

None present for the respondents

Second Appeal abated against respondent no.1 as per Court's order dated 6/9/2013, dismissed against respondent no.2-F as per Court's order dated 1/12/2010 and dismissed against respondent no.3/H, as per Court's order dated 11/10/2015

CORAM : SUNIL P. DESHMUKH, J.
DATE : 16/01/2017

ORAL JUDGMENT :

1. It appears that the main contest in the suit filed by the appellant seeking injunction had been against defendant no.3. The suit had been decreed by the trial court and defendant no.3 had taken up decree against him before the district court in regular civil appeal no.126 of 2004. The same had been allowed and the decree came to be set aside under judgment and decree dated 6/7/2009 by principal district judge, Beed. This second appeal has been lodged against reversal of the decree by the appellate court, by original plaintiff.

2. This court had issued notices way back in December, 2009. Subsequently, the matter lingered on for service on the respondents. It appears that in the meanwhile service had been effected on respondent no.1 - original defendant no.3. In the meanwhile, exhibit A pursis appears to have been filed by counsel on behalf of respondent no.1 according to endorsement dated 24/8/2014 on the farad sheet. Thereafter, this court had granted time to take steps in respect of respondent no.1 and the farad sheet shows that from time to time the matter was getting adjourned and no steps were taken up by by the appellant. This court under order dated 6/9/2013 had granted time of four weeks for removal of office objections and if the objections are not removed within stipulated time, the second appeal as well as civil application was to be treated as dismissed against the unserved respondents and would stand abated against deceased respondent. As such, since no steps were taken in respect of deceased respondent no.1, the office caused an endorsement on 5/10/2013 in view of order dated 6/9/2013, the second appeal stands abated against respondent no.1 pursuant to the court's order. Thereafter, civil application no. 3362 of 2010 had been moved for bringing on record the legal heirs of respondent no.3. That was allowed after some hiccups on 10/01/2014.

3. The matter had come up, thereafter, on quite a few occasions, however, looking at that, the main party, whose appeal has

been allowed being no longer before this court, it is difficult to consider that the second appeal still survives for consideration having been abated against defendant no.3. Second appeal as such stands disposed of as abated and not surviving.

4. Consequently, civil application no. 10848 of 2009 pending in this second appeal, seeking stay to the impugned judgment and decree, stands disposed of.

[SUNIL P. DESHMUKH]
JUDGE

arp/