

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
LETTERS PATENT APPEAL NO.01 OF 2017 IN
CIVIL APPLICATION NO.2965 OF 2007 IN
SECOND APPEAL NO.254 OF 2000

Tukarampant Hariharrao Deo (deceased),
through legal heirs:

01 Ramchandra s/o Tukarampant Deo,
age: 68 years, Occ: Pensioner,
R/o Samarthnagar, Aurangabad.

02 Sharadkumar s/o Tukarampant Deo,
(deceased), through legal heirs:

I) Shailaja Sharadkumar Deo,
age: 55 years, Occ: Service,
R/o 52, Samarthnagar,
Aurangabad.

Devendra Sharadkumar Deo,
age: 33 years, Occ: service,
R/o as above.

Deepali Sharadkumar Deo,
age: 31 years, Occ: Student,
R/o as above.

03 Gopalrao s/o Tukarampant Deo,
age: 47 years, Occ: Business,
R/o Kelibazar, Aurangabad.

Applicants

Versus

01 Nirmanbharati Landmakers Pvt.Ltd.
Through its Director
Ranjit Ashok Darak,
age: 40 years, Occ: Business,
R/o Kanchanjunga Railway Station,
Aurangabad.

02 Wamanrao Trimbakrao Bhope (died),
substituted by:

Nandkishor Digambardas Khoche,
Advocate – Court Receiver,
age: 78 years, Occ: Legal Practitioner,
R/o Aurangabad.

Respondents

Mr.P.P.Dawalkar, advocate for applicants.
Mr.A.S.Bajaj, advocate for Respondents.

**CORAM : R.M.BORDE AND
K.L.WADANE, JJ.**

Reserved on : 24th April, 2017.

Pronounced on: 06th June, 2017.

ORDER (Per R.M.Borde, J.):

1 The appellant is raising challenge to the order dated 30.06.2010, passed by the learned Single Judge of this Court in Civil Application No.2965 of 2007 in Second Appeal No.254 of 2000.

2 An application came to be presented by the respondent-purchaser seeking leave to continue the Second Appeal in place of the original appellant (the Court Receiver). The application was opposed by the appellant herein on the ground that the purchaser has no title to the property and cannot be permitted to replace the original appellant. The application, however, was allowed by the learned Single Judge, which order is impugned in this appeal.

3 The Letters Patent Appeal itself will not be maintainable in view of the provisions of Section 100-A of the Code of Civil Procedure. In the matter of **Mohd. Saud and another Vs.**

Dr. (Maj.) Shaikh Mahfooz and others, reported in AIR 2011 SC 485, the Hon'ble Apex Court has observed that, "a purposive interpretation needs to be adopted while interpreting Section 100A of the Code of Civil Procedure and Letters Patent Appeal shall not be held to be maintainable against an order passed on Civil Application or against an interlocutory order passed by the learned Single Judge of the High Court in a pending Second Appeal." The Hon'ble Supreme Court has observed in paragraphs no.18 to 22 of the judgment, as quoted below:

18 It would be strange to hold that while two appeals will be maintainable against interlocutory orders of a District Judge, only one appeal will be maintainable against a final judgment of the District Judge.

19 It may be noted that there seems to be some apparent contradiction in Section 100-A as amended in 2002. While in one part of Section 100-A it is stated "where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court", in the following part it is stated "no further appeal shall lie from the judgment and decree of such Single Judge". Thus while one part of Section 100-A refers to an order, which to our mind would include even an interlocutory order, the later part of the Section mentions judgment and decree.

20 To resolve this conflict we have to adopt a purposive interpretation. The whole purpose of introducing Section 100-A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. If we look at the matter from that angle it will immediately become apparent that the

LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the learned Single Judge and then to the Division Bench of the High Court, but against a final judgment of the District Judge there can be only appeal. This in our opinion would be strange, and against the very purpose of object of Section 100-A, that is to curtail the number of appeals.

21 It is well settled that the modern method of interpretation is purposive vide Directorate of Enforcement v. Deepak Mahajan and Anr. (1994) 3 SCC 440 : AIR 1994 SC 1775, Hindustan Lever Ltd. v. Ashok Vishnu Kate and Ors. (1995) 6 JT 625 (vide page 631) : AIR 1996 SC 285, and Workmen of American Express International Banking Corporation V. Management of American Express International Banking Corporation (1985) 4 SCC 71 : AIR 1986 SC 458.

22 We are of the opinion that the apparent contradiction in Section 100A as amended in 2002 was only due to bad drafting, and not much can be made out of it once we understand the purpose of Section 100A.

4 In view of the decision of the Hon'ble Supreme Court, as referred to above, instant Letters Patent Appeal does not deserve to be entertained and stands dismissed in limine.

K.L.WADANE
JUDGE

R.M.BORDE
JUDGE