

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**NAGPUR BENCH : NAGPUR****Second Appeal No.166 of 2016****[Nagorao Narayanrao Toimare & others Vs. Narhar Deorao Gajdhar & others]**

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

Court's or Judge's orders

Mr. A. R. Deshpande, Adv., for the appellants.

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CORAM : A. S. CHANDURKAR, J.

DATE : 09th June, 2017

In respect of identical suit property, two Civil Suits bearing Regular Civil Suit Nos. 127 of 1971 and 2 of 1983 came to be filed by the rival parties. While Regular Civil Suit No. 127 of 1971 came to be decreed, Regular Civil Suit No. 2 of 1983 came to be dismissed by virtue of a common judgment. The plaintiffs in Regular Civil Suit No. 2 of 1983 preferred two appeals, being Regular Civil Appeal Nos. 372 and 373 both of 1986. These appeals were decided by a common judgment dated 28th November, 1991. Both the appeals came to be dismissed. However, Second Appeal No. 129 of 1992 came to be preferred challenging the judgment in Regular Civil Appeal No. 372 of 1986. By judgment dated 9th June, 2010, the proceedings were remanded to the first appellate Court for fresh adjudication. However, the adjudication in Regular Civil Suit No. 127 of 1971 attained finality. The present Second Appeal arises out of the adjudication pursuant to the order of remand in

Second Appeal No. 129 of 1992.

Considering the decision of the Honourable Supreme Court in **Premier Tyres Ltd. Vs. Kerala State Road Transport Corporation** [AIR 1993 SC 1202], which has been referred to in the judgment of this Court in **Kamlabai Suresh Khadse Vs. Tukaram Rajaram Ingole & others** [2015 (2) Mh. L.J. 93], in absence of any challenge to the adjudication in Regular Civil Appeal No. 373 of 1986, it would not be permissible for the appellants herein to challenge the impugned judgment. As noted above, the decree in Regular Civil Suit No. 127 of 1971 passed in the common judgment has attained finality.

In view of aforesaid, the present Second Appeal is liable to be dismissed on that count. Second Appeal is accordingly dismissed. The pending Civil Application are also rejected.

Judge