

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

SECOND APPEAL NO.45 OF 2016
DEVIDAS NARAYAN KASHTI AND OTHERS
VS
NARAYAN SADASHIV BODHE AND OTHERS
ALONG WITH
SECOND APPEAL ST. NO.8217 OF 2016.
NARAYAN S/O SADASHIV BODHE
VS
SHRI MANOHAR S/O RAMKRISHNA DHAWAS THROUGH LRS AND OTHERS

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

Court's or Judge's orders

Shri A. C. Dharmadhikari, Advocate for the appellant (in SA.No.45/2016).
Shri M. P. Khajanchi, Advocate for respondent no.1 (in SA.No.45/2016).
Shri M. P. Khajanchi, Advocate for appellant (in SAST No.8217/2016).
Shri A. C. Dharmadhikari, Advocate for the appellant (in SAST
No.8217/2016).

CORAM : A.S. CHANDURKAR, J.

DATED : JUNE 27, 2017.

Since both these appeals raise a challenge to the judgment in Regular Civil Appeal No.57/2012 decided on 26-6-2012, both the appeals are take up for consideration together.

Admit.

Heard finally with the consent of the learned Counsel for the parties.

The following substantial question of law arises for consideration:

The trial Court having decided Regular Civil Suit

Nos.140/1989 and 117/2007 by a common judgment and two appeals having been filed against the very same judgment, whether it was necessary for the appellate Court to have decided both the appeals together?

The appellant in Second Appeal St. No.8217/2016 is the original plaintiff who had filed suit for partition and separate possession of joint family property. This suit was numbered as Regular Civil Suit No.140/1989. The appellant in Second Appeal No.45/2016 filed Regular Civil Suit No.117 of 2007 for specific performance of one of the lands which was the subject matter of the suit for partition. After recording the evidence, the trial Court by judgment dated 12-5-2015 partly decreed the suit for partition and dismissed the suit for specific performance. Being aggrieved the original defendants filed two separate appeals. The appellate Court however, on 16-12-2015 decided the Regular Civil Appeal No.57/2012. Regular Civil Appeal No.58/2012 is still stated to be pending.

In the light of aforesaid admitted facts, it is clear that the appellate Court ought to have decided both the appeals together especially when they were arising from a common judgment passed by the trial Court. Having failed to do so, the appellate Court committed an error as a result of which the judgment dated 16-12-2015 is liable to be set

aside. The substantial question of law as framed stands answered accordingly.

In the result, the following order is passed:

ORDER

Judgment dated 16-12-2015 in Regular Civil Appeal No.57/2012 is quashed and set aside. The proceedings in Regular Civil Appeal No.57/2012 are restored. This appeal shall be heard along with Regular Civil Appeal No.58/2012.

By order dated 11-9-2012 passed below Exhibit-5 in Regular Civil Appeal No.57/2012, the execution of the decree for partition was stayed by imposing certain conditions. This order dated 11-9-2012 shall continue to operate during pendency of the said appeal without prejudice to the rights of the parties. Both the appeals shall be decided on their own merits without being influenced by the earlier adjudication.

The appeals are allowed in aforesaid terms. No costs.

JUDGE