

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

Second Appeal No.248 of 2015
(Jayant s/o Somaji Gadewar v. Rajeshkumar w/o Shambahaddur Singh)

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

Shri C.B. Dharmadhikari, Advocate for Appellant.
Shri Subhash Paliwal, Advocate for Respondent.

Coram : R.K. Deshpande, J.
Date : 11th January, 2017

The dispute in this second appeal pertains to grant of permanent injunction restraining the defendant from interfering with the possession of the plaintiff over Plot No.1 in Survey No.107/52B owned by the Co-operative Housing Society. The plaintiff claims that he becomes the owner of Plot No.1 by way of allotment from the Society, whereas the Courts below have held that the allotment was in favour of the defendant. The controversy thus touches the business of the Society and it falls within the jurisdiction of the Co-operative Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960. The Courts below have committed an error of law in holding that the civil suit can be entertained and decided.

Shri Dharmadhikari, the learned counsel appearing for
the appellant-plaintiff, seeks permission to withdraw this second

appeal with liberty to file a dispute under Section 91 of the Maharashtra Co-operative Societies Act. This is not opposed by Shri Paliwal, the learned counsel appearing for the respondent-defendant.

Hence, the second appeal is disposed of by an order as under :

(i) Regular Civil Suit No.114 of 2003 filed by the appellant-plaintiff is dismissed, as barred by the provision of sub-section (3) of Section 91 of the Maharashtra Co-operative Societies Act, 1960.

(ii) The appellant-plaintiff shall be at liberty to file a dispute under Section 91 of the Maharashtra Co-operative Societies Act, which shall be entertained and decided by the Co-operative Court in accordance with law.

In view of the aforesaid order, the judgments and orders passed by the Courts below do not survive.

Judge.