

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

SECOND APPEAL NO.380 OF 2017

Dhanraj s/o Narayan Nandurkar

..vs..

Mainabai w/o Balaji Muke

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

Court's or Judge's Order

Shri T.S. Deshpande, Counsel for the appellant.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 27, 2017.

1. Heard learned counsel Shri T.S. Deshpande for the appellant.
2. The second appeal is **ADMITTED** on the following substantial question of law:

(i) The Appellate Court having found the appeal filed by the original defendant to be not maintainable whether it could have considered the cross-objection on merit?

Civil Application No.671 of 2017

1. This is an application for grant of Stay.
3. Normally, when the Court admits the second appeals on substantial questions of law, the Stay follows. However, there are always exceptions to the normal rules.

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4. In the present case, the non-applicant/widow filed a suit for injunction since the present applicant was trying to disturb her possession over the suit field.

5. The applicant contested the suit and claimed that he is in possession of the agricultural field, is the subject-matter. Learned Judge of the Trial Court framed the issues. The said issue was as under:

“Whether the plaintiff proves that she is in possession of the suit land?”

The finding recorded by the Trial Judge was in affirmative. Thus, learned Judge of the Trial Court specifically recorded a finding that it is the non-applicant/widow who is in actual cultivating physical possession of the suit land. The suit was dismissed.

6. There may be many reasons as to why the widow failed to approach before the Appellate Court by filing an appeal. However, it is the applicant/defendant who filed an appeal since he was aggrieved by the finding recorded by the Trial Court that the respondent is in possession.

7. It appears that the Notice of the said appeal was served upon the respondent and, thereafter, she filed a cross appeal. The Lower Appellate Court dismissed the appeal filed on behalf of the appellant, however, granted decree of injunction against the present appellant that he should not

disturb the physical cultivating possession of Mainabai/widow.

8. Perusal of both the judgments and decrees shows that the respondent is in possession. The Lower Appellate Court has rightly recorded a finding that the appellant shall not obstruct peaceful possession of the respondent over the suit field. Since the appellant has failed to point out that he is in actual cultivating physical possession of the suit field, merely because his appeal is admitted that does not give any right in his favour to claim the Stay in respect of the direction given by the Appellate Court.

9. In that view of the matter, the application is rejected.

JUDGE

!! BRW !!

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