

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAS] No.499 of 2016
IN
Second Appeal St. No. 25190 of 2015
[Yogesh Dadaji Yenarkar & another Vs. Namdeo Balaji Tadas & another]

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

Court's or Judge's orders

Ms. Kirti Satpute, Adv., for the applicants.
Mr. P.C. Khajanchi, Adv., for respondent no.1.
Mr. M.I. Dhattrak, Adv., for respondent no.2.

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CORAM : A. S. CHANDURKAR, J.

DATE : 05th July, 2017

By this application, the applicants seek leave to file appeal under Section 100 of the Code of Civil Procedure, 1908 [for short "the Code"], for challenging the judgment dated 28th August, 2015 passed by the first appellate Court in Regular Civil Appeal No. 124 of 2010.

The non-applicant no.1 is the original plaintiff who had filed suit against the non-applicant no.2 for perpetual injunction so as to restrain the non-applicant no.2 from demolishing the marriage hall on the plot of

non-applicant no.1. In those proceedings, one Ramchandra Pathak as President of Balaji Mangal Karyalaya Hatao Sangharsha Samiti got himself impleaded as defendant no.2 under provisions of Order-I, Rule 10 of the Code. The trial Court dismissed the suit. During pendency of the appeal filed by the non-applicant no.1, said Ramchandra Pathak expired on 31st January, 2014. The appeal was allowed on 28th August, 2015 and the suit was partly decreed. The non-applicant no.2 was permanently restrained from taking any action on the basis of notice dated 6th March, 1999 issued under provisions of the Maharashtra Regional & Town Planning Act, 1966. The applicants seeks leave to challenge this judgment.

It is submitted on behalf of the applicants that the President of the Samiti had been added under provisions of Order-I, Rule 10 of the Code and had also led evidence before the trial Court. Though the trial Court dismissed the suit, the appellate Court has allowed the appeal which adjudication is sought to be challenged. Though the defendant no.2 expired on 31st January, 2014, no steps were taken to implead any other party in his place. As the legal rights of the applicants are being affected by this adjudication in the civil suit, leave be granted to file the appeal.

The application is opposed by the original plaintiff by submitting that there is no decree passed against the

defendant no.2. The decree has been passed against defendant no.1 and that decree has not been challenged by it. In absence of any decree being passed against defendant no.2, there is no legal right to file any appeal. For said purpose, reliance is placed on the decision in **Satyanarayan Bisanlal Agrawal & another Vs. Veena Rajendrakumar Dhole & another** [2009 (2) Mh. L.J. 397].

The suit as filed was originally against one defendant. The defendant no.2 was permitted to be added as a party; but no relief was sought against it. The appellate Court has decreed the suit only against defendant no.1. The defendant no.1 has been permanently restrained from taking action on the basis of notice dated 6th March, 1999 issued under Section 53 (1) of the Maharashtra Regional & Town Planning Act, 1966. Said notice has been held to be invalid as it did not comply with the statutory requirements of Section 53 (1) of the Act. This decree has been accepted by the defendant no.1 and hence has attained finality. In absence of any decree being passed against the present applicants or they being adversely affected, appeal under Section 100 of the Code would not be maintainable. The decision in *Satyanarayan Bisanlal Agrawal & another* [supra] supports the submissions made on behalf of the non-applicant no.1. The applicants are always free to espouse their legal rights.

In that view of the matter, the prayer in the application cannot be granted. Same is accordingly rejected. Consequently, the appeal also stands disposed of.

Judge

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