

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**926 CIVIL APPLICATION NO. 2718 OF 2018
IN SAST/3600/2018**

ASHOK SHIVLAL GANDHI
VERSUS
BALASAHEB DATTU JAPKAR AND OTHERS

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Advocate for Applicant : Shri A.M.Gholap
Advocate for Respondent Nos.1 & 2 : Shri C.V.Korhalkar

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CORAM : P.R. BORA, J.
Date: June 29, 2018

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PER COURT :-

1 Heard Shri Gholap learned Counsel appearing for the applicant and Shri Korhalkar learned Counsel appearing for the respondents.

2 By filing the present application, the applicant is seeking leave to file Appeal against the Judgment and order passed in Regular Civil Appeal No.146 of 2011 by Adhoc District Judge-3, Ahmednagar on 10.07.2017. It is the contention of the learned Counsel for the applicant that the Sale-Deed executed in his favour by the deceased Bhau Thama Japkar, the original defendant in Regular Civil Suit No.506 of 2000, has been cancelled by the order impugned in the present appeal. It is further contended that the applicant was not made party to the Suit before the Trial Court or in the Appeal before the Appellate Court. Learned counsel further submitted that during pendency of the aforesaid Civil Suit, the plaintiffs

therein i.e. present respondent Nos.1 and 2 though had got amended the Suit plaint and also sought the relief of cancellation of the Sale Deed in favour of the present applicant, the present applicant was not made party to the said Civil Suit. Learned Counsel submitted that the Appellate Court has thus passed the order adversely affecting the interest of the present applicant without hearing him. In the circumstances, according to the learned counsel, the applicant has got right to file an Appeal against the Judgment and order passed in Regular Civil Appeal No.146 of 2011.

3 Learned Counsel for respondent Nos.1 and 2 submitted that the application itself is not maintainable and the appropriate remedy for the applicant would have been to seek declaration to the effect that the order passed in Regular Civil Appeal No.146 of 2011 is not binding on him.

4 Learned Counsel Shri Gholap for the applicant has relied upon the Judgment of the Hon'ble Bombay High Court in the case of ***The Province of Bombay Vs. Western India Automobile Association***, reported in ***AIR (36) 1949 Bombay, 141.***

5 In view of the law laid down in the aforesaid Judgment, it appears to me that the application deserves to be allowed. Hence, the following order:-

ORDER

- 1 The application is allowed.
- 2 The applicant is permitted to file appeal
 against Regular Civil Appeal No.146 of
 2011.
- 3 The Appeal be registered in accordance
 with law.
- 4 Civil application stands disposed of.

(P.R. BORA, J.)

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