

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAS] No.388 of 2015
IN
Second Appeal No. 229 of 2015
[Roshan Ramesh Parate & two others Vs. Suresh Jagannath Parate
& others]

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

Court's or Judge's orders

Ms. A. R. Khare, Adv., for the applicants.
Mr. A. B. Patil, Adv., for respondent nos. 1 and 2.

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CORAM : A. S. CHANDURKAR, J.

DATE : 08th January, 2018

By this application, it is prayed that the effect of the judgment of the first appellate Court to the extent the earlier judgments in Regular Civil Suit Nos. 237 of 2001 and 179 of 1999 are held to be not binding upon the plaintiffs, be directed to continue to operate during pendency of the appeal by staying the judgment of the lower appellate Court.

The appellants are the original plaintiffs who had filed a suit for declaration that the judgments in the aforesaid suits were not binding upon them and that by virtue of Will executed by Jagannath, they had become owners of the suit property. The trial Court decreed the suit. Though the appellate Court allowed the appeal, a finding was recorded that the aforesaid two judgments

were not binding on the plaintiffs. It is, therefore, prayed that said declaration deserves to be made operative during pendency of the appeal.

Reply has been filed on behalf of the respondents opposing the prayer.

Perused the impugned judgments.

The trial Court as well as the first appellate Court have recorded a finding that the judgments in the aforesaid two suits were not binding upon the plaintiffs. Though the first appellate Court has allowed the appeal and dismissed the suit, the finding recorded by the trial Court in that regard has not been disturbed.

In that view of the matter, the declaration granted by the trial Court that the ex parte judgments in Regular Civil Suit Nos. 237 of 2001 and 179 of 1999 were not binding on the plaintiffs shall continue to operate during pendency of the appeal. Similarly, none of the parties to the appeal shall create third-party interests with regard to the suit property.

Application is disposed of.

Judge