

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CIVIL APPLICATION (CAO) NOS. 1845, 1846 AND 1847 OF 2017
IN SECOND APPEAL NO.344/2014

Ramesh s/o Tulsiram Kore V/s Tarabai w/o Dattatraya Pathode

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

Court's or Judge's orders.

Shri J.K. Matale, Advocate for Applicant.
Shri A.N. Vastani, Advocate for Non-applicant.

CORAM: A.S. CHANDURKAR, J.

DATE: 26-06-2018

Considering reasons mentioned in both these applications, the legal heirs of the sole appellant are permitted to be brought on record. The delay is condoned and abatement is set aside.

Amendment be carried out accordingly.

Applications are allowed and disposed of.

SECOND APPEAL NO. 344/2014

The legal heirs of the original defendant have filed this appeal challenging the judgment of the appellate Court dismissing the appeal filed by the original defendant and confirming the decree for specific performance passed by the trial Court.

The respondent entered into an agreement on 10/12/2000 with the original defendant for purchasing land bearing Gat No.459 admeasuirng 0.25 R for a consideration of Rs. 80,000/- per acre. Earnest amount of Rs. 31,000/- was paid and the balance consideration was to be paid within two years from the date of the agreement. Possession was also delivered to the plaintiff. According to the plaintiff, he was ready and willing to perform his part of the agreement. After issuing notice, the aforesaid suit came to be filed. According to the defendant no such agreement was entered into and the entire case as pleaded was denied.

The plaintiff examined himself and two other witnesses. These witnesses however were not cross-examined by the defendant. The trial Court held the agreement at Exhibit No. 56 to be proved and decreed the suit. Before the appellate Court a prayer was made to remand the proceedings for grant of opportunity to the defendant. The appellate Court however, did not find it appropriate to accept that request and dismissed the appeal.

The learned Counsel for the appellants submitted that as the original defendant was suffering from paralysis. He could not contest the proceedings. Before the appellate Court various documents were filed to indicate the medical condition of original defendant. He submitted that the appellate Court ought to have granted opportunity to the defendant and it should have remanded the proceedings to the trial Court. There was no opportunity to contest the proceedings.

The learned Counsel for the respondent supported the impugned judgment. He submitted that the illness of the defendant has not been proved even after considering the documents filed on record. The plaintiff led his evidence in the year 2005 itself after which the defendant did not take any steps to lead evidence. Even the plaintiffs witnesses were not cross-examined. It is therefore submitted that no interference is called for.

Heard the learned counsel and perused the impugned judgment. The plaintiff completed his evidence by the end of 2005. The defendant was required to led his evidence in the year 2006 but he sought various adjournments before the trial Court. The appellate Court in para Nos. 8 to 10 of its judgment has found that the defendant was not diligent in prosecuting the proceedings. It considered the documents filed alongwith the application at Exhibit 51 and found that the same were not sufficient to accept the request of the defendant .

In the light of observations in para Nos.8 to 10 of the judgment of the Appellate Court, I do not find that the appellants have made out case in their favour. As no substantial question of law arises, no interference is called for. Second appeal is dismissed. No costs.

JUDGE

RKN