

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

922 SECOND APPEAL NO.542 OF 1989

HAJRABI W/O SHAIKH CHAND MOMIN
VERSUS
ABDUL BASHIR ABDUL REHMAN MOMIN & ORS

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Mr. Afzal Hussain M. Vakil, Advocate for the appellant Nos.1B, 1E and 1G
Mr. Mujtaba Gulam Mustafa, Advocate for the respondent Nos.2, 3, 5 and 6

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th APRIL, 2019

PER COURT :

1 Though the Second Appeal was admitted long back and by order dated 15.02.2019 the matter was fixed for final hearing on 08.03.2019 at 2.30 p.m.. On that day the matter could not reach and therefore, it has been adjourned today. It was specifically kept at 2.30 p.m.. Parties were already given an understanding that no adjournment will be granted. Secondly, the appeal was dismissed against defendant No.1A as per order of this Court dated 15.01.2015 and dismissed against appellant No.1H as per order dated 01.02.2019. Appeal had abated against respondent Nos.1 and 4 as per order dated 30.10.2014. The suit was filed for redemption of mortgage i.e. Civil

Suit No.40/1977. It was dismissed by learned Civil Judge Junior Division, Erandol on 20.10.1982. Thereafter, the plaintiff filed Civil Appeal No.439/1982 before District Court, Jalgaon. The appeal was allowed on 25.01.1988 by learned Additional District Judge, Jalgaon. Hence, the Second Appeal was filed. It can be seen that it was a joint and several decree. Plaintiff was directed to pay amount of Rs.500/- in the Court and defendant No.1 was directed to re-transfer the suit properties free from all encumbrances in favour of plaintiff and the defendant Nos.2 to 7 were directed to deliver peaceful possession of the suit properties to the plaintiff. Therefore, when no steps have been taken to get the appeal restored as against appellant No.1A and 1H, so also it had already abated against respondent Nos.1 and 4 as well as No.7, who expired and effective decree cannot be passed in Second Appeal, the Second Appeal is dismissed in entirety.

2 No order as to costs.

3 Decree be drawn accordingly.

(Smt. Vibha Kankanwadi, J.)