

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

SA NO.79/2019
Deorao Mahadeorao Cheke and ors
..VS..
Madhukar Bapurao Borkar and ors

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

Court's or Judge's Order

.....
Shri M.P.Khajanchi, Adv. h/f Shri M.I.Dhatrak, Counsel for
the Appellants.

CORAM : V.M.DESHPANDE, J.
DATED : JUNE 11, 2019.

1. Heard Advocate Shri M.P.Khajanchi h/f learned counsel Shri M.I.Dhatrak for the appellants. Also, perused the impugned judgment of the Lower Appellate Court.
2. A suit was filed by the appellants claiming perpetual injunction against the respondents that they should not disturb their possession over the suit property.
3. According to submissions of learned counsel for the appellants, the defendants in their written statement did not challenge title of the appellants over the suit property. The Trial Court partly decreed the suit and thereby restrained the defendants from dispossessing the plaintiffs without following due process of law. According to learned counsel for the appellants, no appeal was filed by the defendants. He submitted that since one of findings recorded by the Court below was adverse to interest, the

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plaintiffs filed an appeal i.e. RCA 8/2012. It is also his submission that even in the said appeal no cross objection was filed by the defendants. Learned counsel for the appellants invited my attention to paragraph No.24 of the impugned judgment passed by learned 2nd District Judge, Yavatmal in which learned Lower Appellate Court observed as under:

“Therefore, learned trial Court rightly held that plaintiffs are not entitled for permanent injunction. The findings of learned trial Court are proper and legal. Therefore, in my opinion the judgment and decree of trial Court does not call for any interference.”

4. In that view of the matter, issue Notices for final disposal of the appeal to the respondents on following substantial questions of law:

(i) Whether in absence of any substantive appeal and cross objection on the part of original defendants Appellate Court was justified in upsetting the order of decree of injunction granted in favour of the appellants?

(ii) Whether the appeal filed by the appellants challenging only finding is maintainable?

5. Record and proceedings be called for.

CAS No.13/2019

1. This is an application for grant of Stay.
2. Learned counsel for the appellants submitted that he is not pressing the present application. Hence, the application is disposed of as not pressed.

JUDGE

!! BRW !!

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