

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

SA NO.753/2017

Nandkishor s/o Shridhar Bhagwat and ors

..VS..

Smt.Yashoda Siyaram Pande and ors

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

Court's or Judge's Order

.....
Shri R.L.Khapre, Counsel for the Appellants.
Shri Abhijit Deshpande, Counsel for the Respondents.

CORAM : V.M.DESHPANDE, J.

DATED : JUNE 28, 2019.

1. Heard learned counsel Shri R.L.Khapre for the appellants and learned counsel Shri Abhijit Deshpande for the respondents, *in extenso*.

2. On 19.12.2017, this Court (Coram : A.S.Chandurkar, J.) formulated following substantial question of law:

“Whether by virtue of order dated 23rd September, 2011 permitting deletion of name of defendant no.1 from the array of parties on account of his death and continuation of the suit against the legal representatives of defendant no.2 amounts to grant of exemption from bringing on record legal representatives of defendant no.1 under provisions of Order-XXII, Rule 4(4) of the Civil Procedure Code, 1908?”

3. Though there is a dispute between learned

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counsel for the parties in respect of certain aspects, surely *prima facie* I am of the view that the present second appeal involves substantial question of law as formulated in order dated 19.12.2017 by this Court (Coram : A.S.Chandurkar, J.).

4. According to learned counsel appearing for both the parties, there may be few more substantial questions of law.

5. In this view of the matter, the second appeal is **Admitted** on following substantial question of law which was already formulated in order dated 19.12.2017 by this Court (Coram : A.S.Chandurkar, J.).

Whether by virtue of order dated 23rd September, 2011 permitting deletion of name of defendant no.1 from the array of parties on account of his death and continuation of the suit against the legal representatives of defendant no.2 amounts to grant of exemption from bringing on record legal representatives of defendant no.1 under provisions of Order-XXII, Rule 4(4) of the Civil Procedure Code, 1908?

6. The parties will be at liberty to press more substantial questions of law at the time of filing hearing of this appeal.

7. Record and proceedings of both Courts below be called for.

CAS No.1530/2017

1. This is an application for grant of injunction.
2. During the course of hearing of the second appeal it is revealed to this Court that the appellants are in confirmed possession of disputed property and the respondents have filed suit for possession against them.
3. In that view of the matter, parties are bound to act in accordance with law. Therefore learned counsel for the appellants submits that there is no necessity passing of any orders on the present application.
4. As such, the civil application stands disposed of.

CAS No.1529/2017

The present application will be considered as the time of final hearing of the second appeal.

CAS No.1047/2018

1. This is an application filed on behalf of the respondents for expeditious hearing of the second appeal.
2. In view of admission of the second appeal, counsel submits that the present civil application has rendered infructuous.
3. The civil application stands disposed of accordingly.

JUDGE

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!! BRW !!