

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

24 CIVIL APPLICATION NO.9005 OF 2021
IN SA/513/1996

DEELIP MANOHAR DESHPANDE.

VERSUS

MANOHAR MADHAV DESHPANDE, DIED, (L.RS.) SHALINI AND OTHERS

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Mr. Girish Rane, Advocate for the applicant

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CORAM : SMT. VIBHA KANKANWADI, J.

ORDER : 14th SEPTEMBER, 2021.

PER COURT :

1 Original plaintiff through legal representatives had filed the Second Appeal. Order of admitting the Second Appeal without framing substantial question of law has been passed on 15.07.1998. It appears that the appeal was dismissed in between and thereafter by Civil Application for restoration and by order dated 16.07.2001, the appeal came to be restored. Thereafter, notices were issued to the appellants for final hearing and it appears that the appellant No.1 and appellant No.4 were reported to be dead. Since no steps were taken to bring their legal representatives on record, the learned Registrar (Judicial) by his order dated 20.08.2014 passed

the order of abating the appeal against them. Further, it was stated that whereabouts of the appellant Nos.3 and 5 were not known and the appellant No.6 was stated incorrectly, therefore, the notices could not be served on them. Under such circumstance, the appeal stood dismissed against appellant Nos.3, 5 and 6. Learned Advocate Mr. Girish Rane is pointing out that the appeal practically remained between appellant No.2 and the respondent, who are the same persons. Interestingly the present respondent was the appellant before the First Appellate Court and while bringing the legal representatives on record it appears that he himself was also been brought on record as respondent also. This fact has not been noted by the concerned First Appellate Court, otherwise in fact, that mistake could have been corrected at the first appellate stage itself. Original plaintiff was the father of the present appellant No.2/respondent. The suit was filed for injunction, which was decreed and then the First Appellate Court, where the present appellant No.2/respondent was the appellant, has allowed the appeal. The Judgment and Decree passed by the Trial Court set aside and the suit was dismissed. However, the legal heirs of the plaintiff were directed not to be evicted from the suit premises, otherwise than, in due procedure of law. The appellant before the First Appellate Court was directed to recourse of the law to recover the possession of the occupied portion demarcated with words, “इ, फ, ग, ह”, by due process of law. That decree passed by the First

Appellate Court was under challenge before this Court in Second Appeal.

2 Now, the affidavit has been filed by the present appellant No.2/respondent stating that after the decision of the First Appeal, the respondent Nos.1 and 4 left the premises around April, 1998. It was fully vacant. Since the premises was left unattended and was getting damage, he had renovated it in 2002 and, therefore, the actual possession of the disputed property is with him. As aforesaid, the appeal stood dismissed against appellant Nos.3, 5 and 6 by order of learned Registrar (Judicial) dated 20.08.2014 and stood abated in respect of appellant No.1 and appellant Nos.4 and reducing the Second Appeal of appellant No.2 and respondent, who are the same persons, the appeal cannot proceed. Hence, the Civil Application No.9005 of 2021 stands allowed and the Second Appeal No.513 of 1996 stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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