

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

WRIT PETITION NO. 4636/2022

DR. OM-PRAKASH S/O SHANKARRAO SAJJANWAR AND ANOTHER
VS
BHAURAO S/O CHINTAMAN ARMARKAR

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.P. Kshirsagar, Advocate for the petitioners
Mr. O.A. Ghare, Advocate for the respondent

CORAM : AVINASH G. GHAROTE, J.

DATED : 03/10/2022

Heard Mr. S.P. Kshirsagar, learned Counsel for the petitioners and Mr. O.A. Ghare, learned Counsel for the respondent.

2. The petition challenges the order dated 12.07.2022 passed by the Trial Court below Exh. 210 on the application filed by the plaintiff for production of certified copy of the deposition of the petitioners/defendants in earlier proceedings to which the petitioners/defendants were party in Regular Civil Suit No. 368/1993. The Trial Court by the impugned order has allowed the production of the documents and also according to the learned Counsel for the petitioners permitted referring those documents to the petitioners/defendants in their cross-examination.

3. Mr. S.P. Kshirsagar, learned Counsel for the petitioners submits, that since the earlier proceedings

which had resulted in Second Appeal No. 5/2009 was disposed of and in para 13, it was held that findings recorded by the Court below were quashed and set aside and not binding upon the parties, the entire evidence as recorded in that suit, could not have been filed and referred to the defendants in thier cross-examinations for which reliance is placed by him upon ***Hanamanthappa and anr. Vs. Chandrashekharappa and ors., AIR 1997 SC 1307***. He further submits, that when the proceedings in the earlier suit were a nullity on account of being simplicitor suit for injunction, nothing recorded therein, could be used by the plaintiff in the present suit against petitioners/defendants.

4. I am unable to agree to this proposition for the reason that even if the suit is dismissed at any stage whatsoever, (in this case in Second Appeal) evidence recorded therein does not get washed away and is available to the plaintiff in the present suit for the purpose of confrontation of the defendants during the course of cross-examinations which position is equally made out under Section 145 of the Evidence Act, which permits such course of action to be adopted. ***Hanamanthappa*** (supra) relied upon by the learned Counsel for the petitioners, does not dilate upon the issue, therefore, the same is not applicable. There is on merit in the writ petition. The writ petition is dismissed. No costs.

5. Authenticated copy of this order be supplied to the learned Counsel for the parties.

JUDGE

SANDIP
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GATE

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