

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

Second Appeal No.43 of 2023

Suresh s/o Sudamji Bharne Vs. Sidheshwar s/o Sudamji Bharne and others

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

Court's or Judge's Order

Shri S.A. Chaudhari, Advocate for the appellant

**CORAM : ANIL S. KILOR, J.
DATED : 19.01.2023**

1. Heard.
2. In the present matter, initially Special Civil Suit (SCS) No.109 of 2010 was filed by the sister of the present appellant against her mother and brothers for declaration, partition and separate possession which was decreed vide judgment and decree dated 08.02.2013 and thereby it was declared that the plaintiff and defendants including the appellant, are having 1/6th share in the suit house bearing No.203/5 situated at Borgaon (Meghe) Wardha, mentioned in Schedule-A of the plaint.
3. The defendants including the appellant did not challenge the said decree on any ground and it had attained the finality.
4. The mother of the appellant, in the year 2010, filed the suit for declaration and permanent injunction for Vide Regular Civil Suit (RCS) No.150 of 2010. In the said suit, the present appellant and his sister Sau. Sunanda, who was the plaintiff in SCS No.109 of 2010, was made party as defendant Nos.1 and 2, respectively. The others were not made party. The said suit was

decreed and the mother of the appellant declared as an absolute owner of the suit property.

5. The said judgment and decree dated 27.02.2017 passed in RCS No.150 of 2010 was contrary to the judgment and decree dated 08.02.2013 passed in SCS No.109 of 2010 which had attained the finality in absence of any challenge to the same.

6. The judgment and decree dated 27.02.2013 passed in RCS No.150 of 2010 was challenged in Regular Civil Appeal No.62 of 2020 by the brothers and sisters of the appellant who were not made party to the suit i.e. RCS No.150 of 2010.

7. The interesting thing is that the present appellant did not raise any challenge to both the decrees.

8. In Regular Civil Appeal No.62 of 2020 vide judgment and order dated 30.09.2022, the learned District Judge, Wardha reversed and set aside the judgment and decree dated 27.02.2013 passed by Jt. Civil Judge Junior Division, Wardha in RCS No.150 of 2010, holding that the judgment and decree dated 08.02.2013 passed in SCS No.109 of 2010 shall operate *res judicata*.

9. The mother of the appellant and the plaintiff in RCS No. 150 of 2010 died in the year 2017 i.e. after four years of the judgment and decree dated 27-02-2013. During her lifetime she did not challenge the judgment and decree dated 08.02.2013 passed against her.

10. In the circumstances, as the appellant has never raised any challenge by filing the appeal against both the judgments and

decrees, referred herein above, I am of the opinion that the present appeal is not maintainable. Accordingly, it is **dismissed**.

[ANIL S. KILOR, J.]