



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

Second Appeal No. 182 of 2011

[Smt. Vimal d/o Sitaram Zade ..vs.. Waman s/o Sitaramji Zade and ors.]

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

Court's or Judge's orders

Mr. S. S. Sharma, Advocate for appellant
Mr. M. A. Sable, Advocate for respondent nos. 1 and 2

CORAM : ANIL L. PANSARE J.

DATED : 20-12-2024

Heard.

2. On 8-5-2024, following order was passed.

“1. On 16th April, 2024, following order was passed :

“On previous date, following order was passed.

“On 18/7/2023 following order was passed :

“1. One more adjournment is sought at the instance of learned counsel for the appellant.

2. The same is granted with clear understanding that the subsequent adjournment will be subject to costs of Rs. 5,000/-. At her instance, stand over to 03.08.2023.”

2. The same status continues even today, in the sense, the adjournment has been sought on the count that learned arguing Counsel Ms. Munshi is held up in some personal work. Adjournment is granted, subject to costs of Rs. 1000/-, to be deposited with the High Court Bar Library Nagpur.

3. Stand over to 16th April, 2024.”

One more adjournment is sought by the learned counsel for the appellant. Adjournment is granted, however, subject to costs of Rs. 2,000/- to be paid to the respondents before next date.

Stand over to 7-5-2024.”

2. *Thereafter, on 7th May, 2024 yet another order was passed :*

“On previous two occasions, adjournment was granted subject to costs. The learned Counsel for the appellant is seeking a day’s adjournment with assurance that she will come prepared and argue the matter.

2] On the basis of assurance, stand over tomorrow, i.e., on 8/5/2024 high on board.”

3. *Despite the aforesaid order the counsel for appellant is seeking adjournment on the ground that she is not able to read the bulky record because of her health issue. She has advised the appellant to engage another counsel.*

4. *It appears to be one of the modes of taking the matter beyond vacation. Not only that previous orders support this inference but on previous date i.e. yesterday the counsel for respondent Nos.1 and 2 has invited my attention to certain facts that would seal the fate of the present appeal.*

5. *The appellant and respondents had filed the suit before the trial Court. The appellant had filed suit simplicitor for injunction, whereas the respondents filed the suit seeking declaration of ownership as also possession. The suit filed by the appellant was decreed, whereas suit filed by the respondents was dismissed. The respondents, therefore, filed two appeals against the judgments/decrees passed by the trial Court. Both the appeals were allowed. The suit filed by the*

appellant came to be dismissed whereas suit filed by the respondents was decreed. The appellant challenged both the decrees under Section 100 of the Code of Civil Procedure, being present appeal i.e. Second Appeal No. 182/2011 and Second Appeal No.183/2011. The subject matter of the present appeal is the suit filed by the appellant seeking injunction, whereas subject matter of the other appeal was the suit filed by the respondents seeking declaration of ownership and possession.

6. The Second Appeal No.183/2011 came to be dismissed on 29.6.2018 for non-compliance of order passed by this Court. The appellant herein has neither challenged the said order nor has taken any steps in that regard. In that sense, the decree passed in favour of respondents has attained finality. The respondent is declared owner of the suit property. Further the appellant herein who was defendant in the said suit has been directed to handover possession of the suit property to the respondents.

7. What remains is present appeal seeking injunction against the respondent. The appellant is thus seeking injunction against a owner of suit property. On the top of it the order directing appellant to handover suit property to the respondent has attained finality.

8. In the circumstances, the question, whose answer is known to the appellant as well, is whether the relief of injunction can be granted in favour of the appellants.

9. Considering above, the adjournment is granted subject to costs of Rs.10,000/- to be paid to the respondent Nos.1 and 2 within one week from today.

10. List after Summer Vacation.”

3. As could be seen, the appellant and respondent had both filed suit before the trial Court. The appellant's suit was a suit simplicitor for injunction whereas the respondent's suit was a suit seeking declaration of ownership as also possession. After having availed remedy of appeal, suit filed by appellant came to be dismissed whereas the suit filed by the respondent was decreed. The appellant had challenged both the decrees under Section 100 of the Code of Civil Procedure, 1908, being present appeal i.e. Second Appeal No. 182/2011 and another, being Second Appeal 183/2011. As noted in the order, Second Appeal No. 183/2011 came to be dismissed on 29-6-2018. It was further noted that the appellant had neither challenged nor has taken any steps in this regard and, therefore, decree passed in favour of respondent had attained finality. The respondent is accordingly declared owner of the suit property and appellant herein, who was defendant in the said suit was directed to handover possession of the suit property to the respondent.

4. Subsequent to passing aforesaid order dated 8-5-2024 and having noticed the aforesaid facts, the appellant herein had filed application before this Court seeking condonation of delay in filing application for restoration of Second Appeal No. 183/2011. The said application viz. Civil Application (CAO) No. 1160/2024 came to be rejected vide order dated 17-12-2024. Thus the order passed by the trial Court has attained finality.

5. Learned counsel for the appellant submits that the appellant intends to challenge the said order before the Hon'ble Supreme Court and accordingly made a request to keep present appeal in abeyance.

6. This request is unacceptable for more than one reason. Firstly, in order dated 8-5-2024, the conduct of the appellant to prolong the proceedings is noted. Various requests were made to adjourn the matter. Thereafter the Court noted the aforesaid fact, more particularly, the failure of the appellant to take steps against the order of dismissal passed in Second Appeal No. 183/2011 which was dismissed in the year 2018. The appellant remained silent for almost 6 years and got up only after the aforesaid order came to be passed.

7. Thus, further efforts were made to prolong the matter. The present request appears to me, is yet another such attempt to get adjournment. Accordingly, the request to keep in abeyance present appeal is refused.

8. Resultantly and for the reasons noted above, as also for the reasons noted in the order dated 8-5-2024, when the respondent has been declared owner of the suit plot and when the appellant has been directed to handover possession of suit plot to the respondent, there appears no question of granting injunction to protect possession of appellant against the true owner which, if granted, will go contrary to the directions passed by the Courts below, which has attained finality.

9. In the aforesaid circumstances, no substantial question of law would arise for consideration. The appeal is, therefore, dismissed.

(Anil L. Pansare, J.)

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