



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

SECOND APPEAL NO.133/2023

Jaideo Gunwantrao Adgokar .vs. Ganeshrao Amrutrao Jawarkar 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. C. N. Adgokar, Advocate for appellant.

CORAM : ANIL L. PANSARE, J.

DATE : 18.03.2024

In order dated 26.02.2024, there occurred a clerical mistake. "Respondent No.1" be replaced by "Respondent No.10". Corrected order be uploaded forthwith.

2. Mr. Hitesh Biherani, Advocate appears to have filed vakalatnama on behalf of respondent nos.1 to 9. Respondent nos.10, 11 and 12 are reported to be dead.

3. Counsel for the appellant submits that respondent no.5 has expired on 15.03.2021 i.e. during the pendency of first appeal. Learned counsel submits that his legal representatives were on record who, in the present appeal, are respondent Nos. 6, 7 and 8. Accordingly, he seeks permission to delete name of respondent no.5. An application to that effect i.e. Civil Application No. 1065/2023 is on record.

4. On the strength of the submission made by the learned counsel, the application is allowed. Name of respondent no.5 be deleted forthwith.

5. On 26.02.2024, following order was passed.

" The Judgment under challenge is dated 16/1/2023. The Respondent No.1 expired on 15/7/2020 (during pendency of first appeal), Respondent No.11 expired on 12/12/2013 (during pendency of Civil Suit) and the

Respondent No.12 expired on 8/9/2018 (during pendency of First Appeal).

2. The learned Counsel for the Appellant shall make a submission as regards effect of death of the Respondents pending suit and first appeal.

3. Stand over to 18th March, 2024.

4. Interim relief granted earlier to continue till next date.”

6. Thus, respondent nos.10 and 12 have expired pending first appeal and respondent no.11 has expired pending civil suit. This fact has been not disclosed to the Courts below and, therefore, the decree has been passed against the dead person.

7. Supreme Court in the case of **Bibi Rahmani Khatoon Vs. Harkoo Gope, (1981) 3 SCC 173**, held thus:

“10. The Concept of abatement is known to civil law. If a party to a proceeding either in the trial court or any appeal or revision dies and the right to sue survives or a claim has to be answered, the heirs and legal representatives of the deceased party would have to be substituted and failure to do so would result in abatement of proceedings. Now, if the party to a suit dies and the abatement takes place, the suit would abate. If a party to an appeal or revision dies and either the appeal or revision abates, it will have no impact on the judgment, decree or order against which the appeal or revision is preferred. In fact, such judgment, decree or order under appeal or revision would become final.”

8. The status of proceedings before the Courts below will have to be crystallized in the backdrop of the provisions contained under Order XXII of the Civil Procedure Code, 1908 which, in a way, deals with the concept of abatement. Respondent no.11, having been expired pending suit and his legal representatives having been not brought on record, the suit stands abated against the respondent no.11 – original defendant no.2. Similar is the status of the first appeal. The appeal stood abated against the

respondent nos. 10 and 12. Nonetheless, when the suit itself stood abated against the respondent no.11 and since the decree has been passed against a dead person, the decree becomes nullity.

9. In the circumstance, there is no other alternative but to set aside the judgment and decree passed by the both the Courts below. Accordingly, the judgment and decree dated 16.01.2023 passed by District Judge – 2, Achalpur in Regular Civil Appeal No.165/2014 so also the judgment and decree dated 15.09.2014, passed by Jt. Civil Judge (Junior Division), Achalpur in Regular Civil Suit No.123/2009, are quashed and set aside.

Parties are at liberty to take appropriate steps for revival of the suit, in accordance with law.

10. Nothing survives in the second appeal. The second appeal is accordingly disposed of in the above terms.

(Anil L. Pansare, J.)