



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.704 OF 2018

Sanjay s/o Ramesh Nannaware,
Age 31 years, Occupation Business,
R/o Kombdiwala Mala, Solapur Road,
Ahmednagar.

...Appellant.

VERSUS

1. Moris s/o Albert Disoja,
Age 62 years, Occupation Business,
R/o Kombdiwala Mala, Solapur Road,
Ahmednagar.

2. Mhasu s/o Sitaram Nannaware,
Since deceased through his L.Rs.

2A. Ramesh Mhasu Nannaware,
Since deceased through his L.Rs.

2A1. Ajay s/o Ramesh Nannaware,
Age 42 years, Occupation Agriculture,
R/o Kombdiwala Mala, Solapur Road,
Ahmednagar.

2A2. Vijay s/o Ramesh Nannaware,
Age 36 years, Occupation Agriculture,
R/o Kombdiwala Mala, Solapur Road,
Ahmednagar.

2A3. Ganraj s/o Ramesh Nannaware,
Age 31 years, Occupation Agriculture,
R/o Kombdiwala Mala, Solapur Road,
Ahmednagar.
(Appeal stands dismissed against
2A3 as per Order dtd.01-03-2019).

2B. Anil s/o Mhasu Nannaware,

Age 51 years, Occupation Agriculture,
R/o Kombdiwala Mala, Solapur Road,
Ahmednagar.

3. Kisan s/o Sitaram Nannaware,
Since deceased through L.Rs.

3A. Thakubai Kisanrao Nannaware,
Since deceased.

3B. Revnath s/o Kisanrao Nannaware,
Age 48 years, Occupation Business,
R/o Kombdiwala Mala, Solapur Road,
Ahmednagar.

3C. Laxmibai d/o Kisanrao Nannaware,
Age Major, Occupation Household,
R/o Kombdiwala Mala, Solapur Road,
Ahmednagar.
(Died without issue.)

3D. Chandrakant s/o Kisanrao Nannaware,
Age 40 years, Occupation Business,
R/o Kombdiwala Mala, Solapur Road,
Ahmednagar.

...Respondents.

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Advocate for Appellant : Absent.

Advocate for Respondent No.1 : Mr. R. L. Kute.

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CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 29-04-2019.

ORAL ORDER :

1. None for the appellant.

2. Learned advocate for the appellant was absent on 15-03-2019.

A specific order was passed that, if submissions are not made on the

next date, the appeal is liable to be dismissed and the matter was adjourned to 01-04-2019. On 01-04-2019 the matter could not reached though it was on board.

3. It is also to be noted from the order passed by this Court on 01-03-2019 that, in spite of specific order passed on 01-02-2019, appellant had not taken steps against respondents No.2A3, therefore the appeal was dismissed against the said respondent. It was also specifically stated that, on the adjourned date, it would be seen as to what would be the effect of the dismissal of the appeal against respondent No.2A3. There is no attempt on the part of the appellant to get the matter restored as regards appellant No.2A3.

4. In the appeal the Judgment and decree passed in Regular Civil Appeal No.159 of 2018, passed by learned District Judge-4, Ahmednagar on 17-04-2018 has been challenged by which order below Exhibit 12 in Execution Petition No.314 of 2014 passed by the learned Executing Court has been confirmed. The Execution Petition was filed for seeking possession from the present appellant. It can be seen that, the respondent No.2 and his legal heirs are the original Judgment Debtors. Now only respondent No.1 appears to be the Decree Holder. But perusal of Exhibit 12 before the Executing Court

would show that, the said application was filed by the present appellant under Section 47, Order 21 Rule 22, Order 21 Rule 97 to 102 contending that, he had interest by way of fact that his predecessor was tenant in the suit property. That means, when now the appeal is dismissed as against respondent No.2A3. At this stage the learned advocate for the respondent No.1 submits that, in fact respondent No.2A3 is appellant himself. Appellant has been joined as party to the execution petition by name 'Ganraj Ramesh Nannaware', whereas he claims that his name is 'Sanjay Ramesh Nannaware', and there is no other person by name 'Sanjay' or in a way he is the same person who is respondent No.2A3.

5. Perusal of the Bailiff report also shows that, a statement was made before him that, no person by this name exist and the same is incorrect. It is sated that, the appellant is taking disadvantage of having two names. Therefore, taking into consideration all these facts, the appeal is dismissed as none for the appellant and on failure to take steps in the matter

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(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.