

Laxman and Another Vs. Deorao

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Court : Mumbai Nagpur

Decided On : Apr-15-2014

Judge : A.P. Bhangale

Appeal No. : Second Appeal No. 345 of 2013

Appellant : Laxman and Another

Respondent : Deorao

Judgement :

Oral Judgment:

1. This appeal is directed against the judgment and order dt.20.2.2012 passed by the learned District Judge-6, Nagpur in Regular Civil Appeal No.101 of 2009. The appeal was partly allowed in absence of any appearance on behalf of the respondents in the first Appellate Court. The suit was partly allowed whereby the plaintiff was declared exclusive owner of suit land bearing Survey No.48, admeasuring 0.51 R., suit land bearing Survey No.26 admeasuring 0.75 R at village Lapka and suit land bearing Survey No.159/1 admeasuring 1.05 hector of village Dhamangaon plus house property described in the schedule appended to the plaint on the basis of alleged partition that took place 35 years back. The said appeal arose from the Judgment and Order dt.17.4.2008 passed in Regular Civil Suit No.56 of 1999 by Civil Judge (Jr.Dn.), Ramtek, District Nagpur, by which the suit was dismissed. The grievance of the appellant is that, in the first Appellate

Court, the appeal was heard and the first Appellate Court, on its own, in the absence of the respondent, decided to partly allow the first Appeal by partly decreeing the suit.

2. The grievance of the appellants is that they were not heard though the first Appellate Court reversed dismissal of the suit by the impugned Judgment. Considered the nature of dispute and that the relief of permanent injunction was sought along with the relief of declaration and damages in respect of the suit property and also taken into consideration that, in the first Appellate Court, the appearance was recorded only on behalf of the appellant (original plaintiffs) and the judgment does not mention as to whether the defendants (respondents in First Appeal) were served, but remained absent and if they were absent, whether the original defendants had engaged Advocate who remained absent at final hearing. The learned first Appellate Judge stated thus:

œEven granting an opportunities the respondents and their learned Counsel failed to argue the case, hence this Court was to close case for Judgment.?

No particulars are given as to when the respondents were served or who had appeared earlier.

3. It is well-known that findings of fact are recorded by the trial Court based upon evidence of witnesses whom the trial Court had occasion to actually see them deposing from witness box, to note their demeanor or for appreciating oral evidence and recording findings of facts and then arrive at final decision in the suit. Therefore, findings of facts recorded by the trial Court must be valued more and ought not to be lightly disturbed except in rare cases where due to error of fact or law, omission by the trial Court to take into account relevant circumstances for giving credence to oral testimony recorded by it is apparent. Bearing in mind that the First Appeal is substantive and valuable right available to a defeated party in the trial Court, both the parties to the First Appeal are entitled for full opportunity of hearing both on questions of law and facts and the first Appellate Court is expected to give a reasoned judgment in support of its findings. Therefore, absolute care is necessary on the part of the first Appellate Judge before reversing the Judgment and Order passed by the trial Court. It is desirable that the parties to

the appeal are as far as possible given ample opportunity to appear before the Court and to advance their rival submissions, particularly before the first Appellate Court arrive at conclusions which are contrary to the conclusions drawn by the trial Court.

4. Hence, in the larger interest of justice, an opportunity is needed to be granted to the appellants (original defendants) to argue the First Appeal on merits. Therefore, the impugned judgment and order is set aside. The appeal is remanded back to the first Appellate Court for hearing in accordance with law by giving sufficient opportunity to the parties to appear before the Court and to advance their rival submissions. Therefore, the appeal is allowed.

Parties to appear before the first Appellate Court on 30.4.2014.

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