

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

SECOND APPEAL NO. 514/2019.

Shrawan Kashinath Meshram (dead) through L.Rs.

-VERSUS-

Mukunda Kashinath Meshram [dead] through L.Rs.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri M.P. Khajanchi, Advocate for Appellants.

CORAM : VINAY JOSHI, J.

DATE : 28.11.2019.

Heard.

2. Appellants who succeeded in Trial Court in getting partial decree, has failed in First Appeal. However, it was dismissed on technical grounds of maintainability. The partial decree passed in Regular Civil Suit No. 404/2000, equally gave rise to respondent to file First Appeal to the extent of limited challenge to the relief granted to the appellant. The said appeal bearing Regular Civil Appeal no.16/2008, arising from the very same impugned judgment of the trial Court was heard prior in time and came to be

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dismissed. The appellant also being aggrieved by the partial rejection of claim challenged the very same judgment vide Regular Civil Appeal No.18/2008. It reveals that unfortunately both the appeals arising out of one and same decree were separately heard, and one of it was decided at the earlier point of time. The learned District Judge by the impugned judgment has held that the appeal is not maintainable since the appeal filed by the other side was already decided. It is urged that the earlier appeal was restricted to part of the property and more particularly, the challenge made by the appellant in his first appeal was not the subject matter of discussion in the said appeal.

4. In view of above, issue notice on the following substantial question of law, returnable on 09.01.2020.

“1. Whether the judgment of First Appellate Court is against the spirit of Order 41 Rule 31 of the Code of Civil Procedure ?

2. Whether the First Appellate Court is justified in dismissing the appeal without deciding the issues ?

JUDGE

Rgd.