

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.850 OF 2016  
WITH  
CIVIL APPLICATION NO.1675 OF 2016**

Shri Khushal Morarji Gada ...Appellant  
Versus  
Shri Vijay Kashinath Giri & Ors. ...Respondents

Mr. Pradeep Thorat a/w. Mr. Umang Mehta & Aamir Altaf, i/b.  
Dhruve Liladhar & Co., for the Appellant.

Mr. S. V. Pitre, for Respondent No.1.

**CORAM : MADHAV J. JAMDAR, J.  
DATED : 20<sup>th</sup> FEBRUARY 2023**

**P.C. :**

1. Heard Mr. Pradeep Thorat, learned counsel appearing for the Appellant and Mr. Pitre, learned counsel appearing for the Respondent No.1.
2. Mr. Thorat, learned counsel appearing for the Appellant submitted that the following substantial questions of law are involved in this Second Appeal:-

- i. Whether the suit is within limitation particularly with respect to the reliefs sought by amended clause in paragraph Nos. 12(d) and 12(e) ?
- ii. Whether as the plaint does not contain any

Sonali

pleadings regarding forgery and there is no evidence laid by the Plaintiff regarding forgery the Plaintiff i.e. Respondent No.1 is entitled for the reliefs sought in the plaint particularly, amended plaint?

iii. Whether the registered Sale Deed dated 6<sup>th</sup> October 1986 executed by the Plaintiff in favour of Defendant No.2 and subsequent sale deed carries presumption of genuineness?

iv. Whether the Plaintiff has adequately discharged burden to prove his case in the evidence?

v. Whether the Plaintiff is entitled to the relief as he has not sought cancellation of document, as per Section 31 of the Specific Relief Act?

vi. Whether in the facts and circumstances, the learned Appellate Court should have remanded the matter to the learned Trial Court?

3. To substantiate the aforesaid substantial questions of law, Mr. Thorat has advanced several submissions and relied on various decisions of the Supreme Court.

4. It is the contention of Mr. Thorat that the suit was amended pursuant to order passed on amendment application dated 30<sup>th</sup> October 2006. He submitted that the amendment is

Sonali

concerning transaction dated 6<sup>th</sup> October 1986, 15<sup>th</sup> April 1991 and 6<sup>th</sup> January 2003. He submitted that these amendments are pertaining to registered agreements. The registered agreements are presumed to be genuine and therefore there is heavy burden on the Plaintiff. He therefore, submitted that the suit is hopelessly barred by limitation. To substantiate his contention, Mr. Thorat, relied on the decision of the Supreme Court in **Bellachi(Dead) by LRS. vs. Pakeeran**<sup>1</sup>. In that case, it has been held that in a given case, it is possible to hold that the burden would be on the vendee to prove that the deed of sale was a genuine document, however, a registered document, carries with it a presumption that it was executed in accordance with law.

5. He also submitted that even in cases of ex-parte judgment, it is only when the Court is fully satisfied that there is no fact which needs to be proved at the instance of Plaintiff in view of the deemed admission by the Defendant Court can conveniently pass the Judgment and Decree against the Defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact

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1 2009 12 SCC 95

Sonali

involved in the case arising from the plaint itself giving rise to two versions it would not be safe for the Court to record an ex-parte judgment without directing the Plaintiff to prove the facts so as to settle the factual controversy. To substantiate the said contention, he relied on the decision of Supreme Court in **C. N. Ramappa Gowda vs. C.C. Chandregowda (Dead) by LRS & Anr.**<sup>2</sup> He also relied on paragraph 29 of the said decision, which reads as under:-

“29. It is a well-acknowledged legal dictum that assertion is no proof and hence, the burden lay on the plaintiff to prove that the property had not been partitioned in the past even if there was no written statement to the contrary or any evidence of rebuttal. The trial court in our view clearly adopted an erroneous approach by inferring that merely because there was no evidence of denial or rebuttal, the plaintiff's case could be held to have been proved. The trial court, therefore, while accepting the plea of the plaintiff-appellant ought to have recorded reasons even if it were based on ex-parte evidence that the plaintiff had

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2 (2012) 5 SCC 265

succeeded in proving the jointness of the suit property on the basis of which a decree of partition could be passed in his favour.”

(Emphasis added)

6. He submitted that point of limitation can be raised at any stage. To substantiate the said contention, he relied on the decision of Supreme Court in **Saurav Jain & Anr. vs. A. B. P. Design & Anr.**<sup>3</sup>. In that case, it has been held that pure questions of law which goes to the root of the jurisdiction in a case can be raised for the first time in an Appeal. It has been observed that the said ground to be raised would not require the submission of additional evidence, since it is a pure question of law and strikes at the heart of the matter. He also relied on the decision of Supreme Court in **State of Gujarat vs. Kothari & Associates**<sup>4</sup>. On the basis of said decision, he submitted that a duty has been cast on the Court to satisfy itself that suit is not barred by limitation, regardless of whether such a plea has been raised by the parties. He therefore, submitted that it is the duty of the Court to see that suit is not barred by limitation and in this particular case, suit is barred

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3 2021 SCC Online 552

4 2016 14 SCC 761

Sonali

by limitation.

7. On the other hand, it is the contention of Mr. Pitre, learned counsel appearing for Respondent No.1 that the Respondent No.1 i.e. Plaintiff filed suit on 13<sup>th</sup> October 2003 along with Exhibit-5 injunction application. He submitted that reply dated 3<sup>rd</sup> December 2003 was filed to said Exhibit-5 application by the Appellant-Original Defendant and for the first time disclosed about the various transactions including Sale Deed dated 6<sup>th</sup> October 1986 allegedly executed by the Plaintiff in favour of Defendant No.2, Sale Deed dated 15<sup>th</sup> April 1991 executed by Defendant No.2 in favour of Defendant Nos. 3 and 4 and Sale Deed dated 6<sup>th</sup> January 2003 executed by Defendant Nos. 3 and 4 in favour of Defendant No.1.

8. Mr. Pitre, learned counsel appearing for Respondent No.1 submitted that initially suit was only filed against Appellant i.e. original Defendant seeking declaration of ownership and for removal of encroachment and injunction. He submitted that after above facts are disclosed in the reply to Exhibit-5 application by the Appellant, on 30<sup>th</sup> October 2006 amendment application was filed and the plaint was amended. He submitted

Sonali

that Article 56 of the Limitation Act, 1963 will apply to the present suit. He submitted that therefore, the limitation has started from 3<sup>rd</sup> December 2003 and therefore, amendment application made on 30<sup>th</sup> October 2006 is well within limitation. He submitted that in any case, the amendment will relate back to the date of the suit and therefore, the same is well within limitation by considering the date of knowledge i.e. 3<sup>rd</sup> December 2003. He pointed out various aspects and submitted that this is not a case where the Appellant is entitled for any equitable relief or remand of the Appeal.

9. He submitted that, in this case, the Defendants failed to file any written statement and failed to cross-examine the Plaintiff and therefore the contentions raised in the deposition by the Plaintiff have remained uncontroverted. He submitted that the Plaintiff has proved his case in accordance with law. He submitted that there is no substance in the substantial questions of law raised by the Appellant.

10. Before considering the rival submissions, it is necessary to set out certain factual aspects.

a) The suit initially was filed by Respondent No.1 on 13<sup>th</sup>

Sonali

October 2003 only against Appellant i.e. Khushal Morarji Gada. It is the contention in the plaint that the Respondent No.1 i.e. Plaintiff has purchased the suit property by the registered sale dated 26<sup>th</sup> June 1986 from one Laxman Balu Chakane. It is contended that since purchase, the Respondent No.1 is in the possession of the suit property. On 8<sup>th</sup> October 2003, the Appellant encroached on about 1.2 to 1.5 guntha land, out of 3 guntha land of suit property and started some construction and therefore, the suit was filed seeking declaration that the Respondent No.1 is the owner of said 1.5 guntha land which has been encroached by the Appellant and for removal of encroachment and for possession.

b) The Plaintiff also filed Exhibit-5 application in the said suit. The Appellant filed detailed reply dated 3<sup>rd</sup> December 2003 to said Exhibit-5 application. In the said reply, it has been disclosed that on 6<sup>th</sup> October 1986, said 1.5 guntha land was sold by Respondent No.1 in favour of Prakash Gopinath Patil. Said Prakash Gopinath Patil, by Sale Deed dated 15<sup>th</sup> April 1991 sold the said land to Gahiridevi Mali and Najudevi Mandowar and thereafter, by registered Sale Deed dated 6<sup>th</sup> January 2003,

Sonali

the said land was sold by said Gahiridevi and Najudevi to original Defendant-Khushal Morarji Gada.

c) In view of the said written statement, the Respondent No.1 filed amendment application on 30<sup>th</sup> October 2006 bearing Exhibit-34, which was allowed by order dated 12<sup>th</sup> October, 2007. Pursuant to said order, the Respondent No.1 impleaded the said persons as Defendants i.e. Defendant No.2-Prakash Gopinath Patil, Defendant No.3-Gahiridevi Mali, Defendant No.4-Najudevi Mandowar and accordingly raised the contention that he has not sold any property to said Prakash Gopinath Patil and said Sale Deed and further Sale Deeds are not binding on him. Relevant amendment of clause (5A) reads as under:-

“५अ) सदर दाव्यांत प्रतिवादीने निशाणी ५ कडील म्हणण्यामध्ये दावा मिळकत वादीनीच तारीख ०६/१०/१९८६ रोजीच्या खरेदीखताने प्रकाश गोपिनाथ पाटील यांस विकल्याचे म्हटले आहे. सदर कथन वादीस मान्य व कबून नाही. वादीने दावा मिळकतीमधील कोणताही भाग केव्हाही प्रकाश गोपिनाथ पाटील यांस अथवा त्यांचेतर्फे अन्य कोणासही विकलेला नाही अथवा कोणत्याही पध्दतीने हस्तांतरित केलेला नाही. त्यामुळे प्रकाश गोपिनाथ पाटील यांचा दावा मिळकतीशी काहीएक संबंध नाही. तसेच प्रकाश गोपिनाथ पाटील यांचे दावा मिळकतीबद्दल टायटलच नसलेमुळे दावा मिळकतीबद्दल प्रतिवादी नंबर १ यांस काहीएक टायटल, हक्क हितसंबंध प्राप्त झालेले नाहीत व प्रतिवादी नंबर १, ३ व ४ मधील व्यवहारही वादीवर तो बेकायदेशीर व नलिटी

Sonali

असलेमुळे बंधनकारक नाही.”

(Emphasis added)

d) The amended prayer clauses (d) and (e) read as under:-

“ड) प्रतिवादी नंबर २ चा दावा मिळकतीशी संबंध नाही आणि तारीख ०६/१०/१९८६ चे दावा मिळकती संदर्भातील तथाकथित खरेदीखत वादीने प्रतिवादी नंबर २ यांस करून दिलेले नसून ते खोटे आहे व वादीवर बंधनकारक नाही असा ठराव व्हावा.

ई) दावा मिळकती संदर्भातील तारीख १५/०४/१९९१ रोजीचे प्रतिवादी नंबर २ यांनी प्रतिवादी नंबर ३ व ४ यांस करून दिलेले खरेदीखत आणि तारीख ०६/०१/२००३ रोजीचे प्रतिवादी नंबर ३ व ४ यांनी प्रतिवादी नंबर १ यांस करून दिलेले खरेदीखत, अशी दोनही खरेदीखते वादीवर बंधनकारक नाहीत, सदर व्यवहार नलिटी आहेत असा ठराव व्हावा.”

(Emphasis added)

e) It is significant to note that although the Appellant is served and he has filed reply to Exhibit-5 application, inspite of several opportunities, he failed to file the written statement and therefore, on 22<sup>nd</sup> March 2004 order to the effect that suit to proceed without written statement against Defendant was passed and thereafter again ‘No W.S.’ order was passed against rest of the Defendants on 17<sup>th</sup> June, 2008.

f) The Respondent No.1 filed affidavit of evidence on 20<sup>th</sup> November 2009 and inter alia stated on oath as follows:-

Sonali

“५अ) सदर दाव्यांत प्रतिवादीने निशाणी ५ कडील म्हणण्यामध्ये दावा मिळकत मीच तारीख ०६/१०/१९८६ रोजीच्या खरेदीखताने प्रकाश गोपिनाथ पाटील यांस विकल्याचे म्हटले आहे. सदर कथन मला मान्य व कबून नाही. मी दावा मिळकतीमधील कोणताही भाग केव्हाही प्रकाश गोपिनाथ पाटील यांस अथवा त्यांचेतर्फे अन्य कोणासही विकलेला नाही अथवा कोणत्याही पध्दतीने हस्तांतरित केलेला नाही. त्यामुळे प्रकाश गोपिनाथ पाटील यांचा दावा मिळकतीशी काहीएक संबंध नाही. तसेच प्रकाश गोपिनाथ पाटील यांचे दावा मिळकतीबद्दल टायटलच नसलेमुळे दावा मिळकतीबद्दल प्रतिवादी नंबर १ यांस काहीएक टायटल, हक्क हितसंबंध प्राप्त झालेले नाहीत व प्रतिवादी नंबर १, ३ व ४ मधील व्यवहारही माझेवर तो बेकायदेशीर व नलिटी असलेमुळे बंधनकारक नाही. प्रतिवादी क्रमांक १ ने या अतिक्रमित भागावर बांधकाम करून गाळा बांधला आहे. त्यांस ग्रामपंचायत चेंद्रे यांनी मालमत्ता क्र. १२३९ असा दिला आहे.”

(Emphasis added)

g) It is significant to note that the Appellant even failed to cross-examine the Plaintiff and the same is specifically recorded in order dated 7<sup>th</sup> December, 2009. It reads as under:-

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“प्रतिवादी व त्यांचे वकिल पुकारता गैरहजर  
मुदतीचा अर्ज देखील नाही, सबब उलटतपास  
नाही असा आदेश करण्यात येतो.”

अलिबाग  
दिनांक :- ७ डिसेंबर २००९

(रू. दि. जगताप)  
२ रे सह दि. न्या. क. स्तर,  
अलिबाग

h) It is further significant to note that on 19<sup>th</sup> March 2010,

Sonali

the Appellant filed application bearing Exhibit-63 and Exhibit-65 for recalling order of “No W.S.” and “No Cross”. It is significant to note that, the said “No W.S.” order dated 22<sup>nd</sup> March, 2004 and “No Cross” order dated 7<sup>th</sup> December, 2009 were challenged on 2<sup>nd</sup> July, 2010 i.e. after delay of about 6 years and 7 months respectively. The said applications bearing Exhibit-63 and Exhibit-65 were rejected on 2<sup>nd</sup> July 2010. It appears that, the said orders were not challenged before higher Courts and in fact no grounds were raised regarding the illegality of the same before the First Appellate Court.

i) It is further significant to note that thereafter, Respondent No.1 filed additional affidavit of evidence dated 10<sup>th</sup> August 2010. The said additional affidavit reads as under:-

“सरतपास—पुरवणी शपथपत्र

देवाशपथ खरे सांगतो; मी. श्री. विजय काशिनाथ गिरी, वय ४९, मु. नागडोगरी चेंदरे सत्यप्रतिज्ञेवर ऑफिडेव्हिट करतो की मी या दाव्याचे कामी दावा मिळकतीपैकी दिडगुंठे भागाबद्दल्या ता. ६/१०/१९८६ रोजीच्या तथाकथित खरेदीखताची सही शिक्क्याची नक्कल हजर केली आहे. सदर खरेदीखत मी करून दिलेले नाही, प्र. वादी ३ ते ४ वर दरम्यानची ता. १५/४/१९९१ रोजीच्या आणि प्र. वादी ३ व ४ आणि क्र.१ दरम्यानच्या ता. ६/१/०३ रोजीच्या खरेदीखताची सहिशिक्क्याची नक्कल दाखल केली आहे. येणेप्रमाणे पुरवणी शपथ पत्र आहे.

Sonali

ता. १०.८.१०

''(Emphasis added)

“Q”

Additional evidence of P.W. 1 is read & recorded before court on solemn affirmation witness states its contents are true & correct.”

s/d. 10.08.2010”

j) The Appellant failed to Cross-examine the Respondent-Plaintiff and therefore, the contentions raised in Evidence Affidavit and Additional Evidence Affidavit have remained uncontroverted.

11. By Judgment and Decree dated 2<sup>nd</sup> September 2010 passed by learned Joint Civil Judge, Junior Division, Alibag, the said Regular Civil Suit No.120 of 2003 was decreed. By the said decree, it has been declared that Respondent No.1 i.e. Plaintiff is the owner of the suit property. The Appellant was directed to remove the encroachment, demolition of the same and it was further directed to handover possession of the same to the Respondent No. 1-Plaintiff. It has been further declared that, the Defendant No. 2 has no concern with the suit property and the sale deed dated 6<sup>th</sup> October, 1986 was not executed by the

Sonali

Plaintiff in favour of the Defendant No. 2 and the subsequent sale deeds dated 15<sup>th</sup> April, 1991 and 6<sup>th</sup> January, 2003 are nullity and not binding on the Plaintiff.

12. The appellant i.e. Defendant No.1 challenged the said Judgment and Decree of the Trial Court by filing Civil Appeal No.168 of 2010 and the said appeal was dismissed with costs by the Judgment and Decree dated 9<sup>th</sup> August 2016 passed by the learned District Judge-2, Raigad-Alibaug.

13. The present Second Appeal takes exception to Judgment and Decree of the Trial Court as well as Judgment and Decree of the First Appellate Court.

14. In the above background, it is necessary to consider various substantial questions of law raised by the Appellant.

15. The first substantial question is regarding limitation. The relief sought in the amended plaint in prayer clause (d) is that Plaintiff has not executed Sale Deed dated 6<sup>th</sup> October, 1986 in favour of Defendant No.2 and the said Sale Deed is false and not binding on the Plaintiff. The prayer clause (e) is regarding the declaration that further Sale Deed dated 15<sup>th</sup> April 1991 executed by Defendant No.2 in favour of Defendant Nos. 3 and 4

Sonali

and Sale Deed dated 6<sup>th</sup> January 2003 executed by Defendant Nos. 3 and 4 in favour of Defendant No.1 are not binding on the Plaintiff and the said transactions are nullity. It has already come on record that the original plaint was only filed against Appellant and in the reply to Exhibit-5 application, the Appellant disclosed about all the above transactions and thereafter, plaint was amended.

16. It is the contention of Mr. Thorat, learned counsel appearing for the Appellant that, Article 58 of the Limitation Act, 1963 will apply and therefore, limitation is of three years when the right to sue first accrued. It is the submission that the Sale Deed executed by Respondent No.1 in favour of Appellant is registered Sale Deed and therefore, there is presumption regarding its genuineness. It is his submission that the limitation will start from the date of registration of the said Sale Deed i.e. from 6<sup>th</sup> October 1986 and therefore, suit filed either on 13<sup>th</sup> October 2003 or on the date of amendment application dated 30<sup>th</sup> October 2006 is barred by limitation. However, it is significant to note that it is the case of the Plaintiff that he has not executed any document in favour of

Sonali

Defendant No.2 which includes said Sale Deed dated 6<sup>th</sup> October, 1986 and that he has not sold suit property or any portion of the suit property to said Prakash Gopinath Patil i.e. Defendant No.2 or to anybody else and therefore, said Prakash Gopinath Patil has no title to execute further Sale Deeds and further Sale Deeds are not binding on the Respondent No.1 and they are nullity. Article 56 applies to suit to declare the forgery of an instrument issued or registered. For such type of suit period of limitation is three years and time from which period begins to run is the time when the issue or registration becomes known to the Plaintiff.

17. Factual position on record clearly shows that, Respondent No.1 i.e. Plaintiff for the first time came to know about the forgery or registration on 3<sup>rd</sup> December 2003 when the reply to Exhibit-5 application was filed and amendment application was filed on 30<sup>th</sup> October 2006. Therefore, it is clear that within three years the Plaintiff has filed application seeking above mentioned amendment. Therefore there is no substance with respect to the substantial question concerning limitation.

18. As regards submission of Mr. Thorat, learned counsel

Sonali

appearing for the Appellant that, no details of forgery are given, it is significant to note that Plaintiff has specifically come up with the case that he has not executed any Sale Deed in favour of said Prakash Gopinath Patil. Therefore, no further details of forgery are required to be given as, he has specifically stated that he has not sold the property. It is further significant to note that the Plaintiff in his evidence affidavit dated 20<sup>th</sup> November 2009 laid evidence to the effect that suit property or no part of the suit property has been sold by him to Prakash Gopinath Patil or any other person. Thereafter, by filing additional evidence affidavit dated 10<sup>th</sup> August 2010, he has *inter alia* produced certified copy of the said Sale Deed dated 6<sup>th</sup> October 1986 and stated that he had not executed the said registered Sale Deed. It is significant to note that the Plaintiff was not cross-examined by the Appellant when the affidavit of evidence was earlier filed on 20<sup>th</sup> November, 2009 as well as when additional affidavit of evidence dated 10<sup>th</sup> August 2010 was filed. As far as evidence affidavit dated 20<sup>th</sup> November 2009 is concerned, on 7<sup>th</sup> December 2009, the Court has recorded that Defendant and his Advocate were absent for

Sonali

conducting cross-examination and therefore, “No Cross” order was passed. It is further significant to note that the additional affidavit of evidence was filed on 10<sup>th</sup> August 2010 and before that, above referred Exhibit-63 and 65 applications were filed on behalf of Appellant i.e. Defendant No. 1 seeking setting aside “No W.S.” order and “No Cross” order and the same were rejected by order dated 2<sup>nd</sup> July 2010. Therefore, it is clear that the Advocate of the Defendant No. 1 has appeared in those Exhibit-63 and 65 applications. Those applications were filed on 19<sup>th</sup> March 2010 and ultimately rejected on 2<sup>nd</sup> July 2010. Thereafter, also on 16<sup>th</sup> August 2012, Defendant No.1 and his Advocate were absent to cross-examine the Plaintiff as far as additional affidavit of evidence is concerned. Thus, there is no substance in the said substantial questions of law raised by Mr. Thorat.

19. As far as contention that although ex-parte decree is passed, burden is on the Plaintiff to prove his case, there cannot be any dispute about the said proposition. However, this is a case where in the plaint, Plaintiff after coming to know about the said transactions in favour of said Prakash Gopinath

Sonali

Patil and others amended the plaint and raised the contention that he has not executed the said Sale Deed dated 6<sup>th</sup> October, 1986. He filed the evidence affidavit raising the said contention and after receipt of certified copy of the said Sale Deed, produced the same by filing Supplementary Evidence Affidavit and specifically contented that he has not executed the said Sale Deed. Therefore, this is a case where the Plaintiff has discharged his burden and therefore, the decisions on which Mr. Thorat, learned counsel appearing for the Appellant has relied, has no application to the facts of this case. It is significant to note that, the Appellant-Defendant No. 1 has failed to file written statement and also cross-examine the Plaintiff. Both the Courts have concurrently held that the Plaintiff is the owner of the suit property and he has not executed said Sale Deed dated 6<sup>th</sup> October, 1986. Mr. Thorat has failed to point out that the said finding is contrary to the evidence on record. Therefore, there is no substance in the said substantial question of law.

20. As far as the contention that Sale Deeds are registered Sale Deeds and therefore, carries presumption about its

Sonali

genuineness, there cannot be any two opinions about said proposition. However, in this case, the Plaintiff has adequately discharged his burden. Although several opportunities were given to the Defendant No.1 at various stages, he has failed to avail the same and failed to file the written statement and failed to cross-examine the Plaintiff. This clearly shows that in fact, adverse inference is required to be drawn against Defendant No.1. This is a case where Plaintiff has come up with the specific case that, he has never executed any Sale Deed in favour of said Prakash Gopinath Patil and therefore, the fact that the Defendant No.1 i.e. Appellant and other Defendants failed to file written statement and has avoided to cross-examine the Plaintiff is very significant. Therefore, this is a case where adverse inference is required to be drawn against Defendant. Therefore there is no substance in the said substantial question.

21. The substantial question raised by Mr. Thorat that, the Plaintiff is not entitled to the relief as he has not sought cancellation of document as per section 31 of the Specific Relief Act, it is significant to note the amended prayer clauses in the plaint. The said amended prayer clauses (d) and (e) reads as

Sonali

under :

“(d) The amended prayer clauses (d) and (e) read as under:-

“ड) प्रतिवादी नंबर २ चा दावा मिळकतीशी संबंध नाही आणि तारीख ०६/१०/१९८६ चे दावा मिळकती संदर्भातील तथाकथित खरेदीखत वादीने प्रतिवादी नंबर २ यांस करून दिलेले नसून ते खोटे आहे व वादीवर बंधनकारक नाही असा ठराव व्हावा.

ई) दावा मिळकती संदर्भातील तारीख १५/०४/१९९१ रोजीचे प्रतिवादी नंबर २ यांनी प्रतिवादी नंबर ३ व ४ यांस करून दिलेले खरेदीखत आणि तारीख ०६/०१/२००३ रोजीचे प्रतिवादी नंबर ३ व ४ यांनी प्रतिवादी नंबर १ यांस करून दिलेले खरेदीखत, अशी दोनही खरेदीखते वादीवर बंधनकारक नाहीत, सदर व्यवहार नलिटी आहेत असा ठराव व्हावा.”

(e) It is significant to note that although the Appellant is served and he has filed reply to Exhibit-5 application, inspite of several opportunities, he failed to file the written statement and therefore, on 22<sup>nd</sup> March 2004 order to the effect that suit to proceed without written statement against Defendant was passed and thereafter again ‘No W.S.’ order was passed against rest of the Defendants on 17<sup>th</sup> June, 2008.”

The above prayer clauses are very clear and therefore, there is no substance in the said substantial question.

22. The last substantial question that, the First Appellate Court should have remanded the case to the Trial Court. It is

Sonali

significant to note that although several opportunities were given to the Defendant No.1 at various stages, he has failed to avail the same and failed to file the written statement and failed to cross-examine the Plaintiff. It is further significant to note that on 19<sup>th</sup> March 2010, the Appellant filed application bearing Exhibit-63 and Exhibit-65 for recalling order of “No W.S.” and “No Cross”. It is significant to note that, the said “No W.S.” order dated 22<sup>nd</sup> March, 2004 and “No Cross” order dated 7<sup>th</sup> December, 2009 were challenged on 2<sup>nd</sup> July, 2010 i.e. after delay of about 6 years and 7 months respectively. The said applications bearing Exhibit-63 and Exhibit-65 were rejected on 2<sup>nd</sup> July 2010. It appears that, the said orders were not challenged before higher Courts and in fact no grounds were raised regarding the illegality of the same before the First Appellate Court. Thus there is no substance in the said substantial question of law regarding remand.

23. Therefore, there is no substance in any of the substantial questions of law raised by the Appellant. There is no substance in the the Second Appeal and the same is dismissed with cost.

24. In view of the dismissal of the Second Appeal, nothing

Sonali

survives in the Civil Application and the same is also dismissed.

25. At this stage, Mr. Thorat, learned counsel appearing for the Appellant states that there is stay to the implementation of decree, which is in operation since 18<sup>th</sup> October 2016 and the same be continued for a reasonable period. Mr. Pitre, learned counsel appearing for Respondent No.1 strongly oppose the said request.

26. However, as the stay is in operation since 18<sup>th</sup> October 2016, the same is extended up to 31<sup>st</sup> August, 2023.

**[MADHAV J. JAMDAR, J.]**