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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.385 OF 1997

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| 1. Shankar s/o Maroti Kendre,
Age - 36 years, Occ – Agriculture
R/o Umberga Khojan,
Taluka - Kandhar, District – Nanded (Original Defendant No.1) | APPELLANTS |
| 2. Khushabai w/o Shankar Kendre,
Age - 31 years, Occ - Agriculture,
R/o Umberga Khojan,
Taluka - Kandhar, District – Nanded (Original Defendant No.2) | |

VERSUS

- | | |
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| 1. Shriram s/o Bapuna Gundale
Age - 56 years, Occ - Agriculture,
R/o Hadoli Brahmsket,
Taluka - Kandhar, District – Land | RESPONDENTS

(Original Plaintiff) |
| 2. Dwarkabai w/o Shrirang
Age - 43 years, Occ - Agriculture
R/o Umberga Khojan,
Taluka - Kandhar, District – Nanded (Original Defendant No.3) | |
| 3. Udhav s/o Gyanoba Warati,
Age - 33 years, Occ - Agriculture
R/o Umberga Khojan,
Taluka - Kandhar, District – Nanded (Original Defendant No.4) | |

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Mr. M. V. Deshpande, Advocate for the appellants
 Mr. Amey Sabnis h/f Mr. S.G.Rudrawar, Adv. for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 26th NOVEMBER, 2015

ORAL JUDGMENT :

1. This is defendants' second appeal against judgment and

decree passed by appellate court in Regular Civil Appeal No.124 of 1994 dated 17th October, 1997 granting declaration of ownership of 92 Are land in gut No.329 (forming southern portion of said gut number) to plaintiff and injunction against present appellants, reversing the judgment and order of trial court dated 6th August, 1996 in Regular Civil Suit No. 5 of 1993 refusing the reliefs claimed by the plaintiff-present respondent. (Parties herein after would be referred to by their status in said suit).

2. I have heard learned advocates on either side quite extensively.

3. Factual position about which there is no serious dispute appears to be that the land bearing survey No.69 admeasuring 7 acre 30 *guntha* had been originally owned and possessed by one Maroti Mahadu. Said Maroti Mahadu had sold a portion of 2 acre land to one Ramrao Lingoji. Subsequently, said portion came to be purchased by plaintiff under a registered sale deed dated 3rd June, 1975. On the very day, the plaintiff also purchased a northern abutting portion to aforesaid land from Ramrao Lingoji, under a registered sale deed from Maroti Mahadu from land survey No.69 and a few days later, he purchased another piece

of land abutting aforesaid purchased land on the northern side under a registered sale deed dated 12th August, 1975. As such, the plaintiff became owner of an area of land of about 6 acre from said survey No.69. There are recitals in the sale deeds about delivery of possession by vendor to the vendee.

4. After a few years, the plaintiff parted with possession of a piece of 3 acre 28 *guntha* land under a sale deed to vendee Shriram Maroti, son of original holder Maroti Mahadu of the land from aforesaid 6 acre land purchased by him. It is the contention of the plaintiff that he had parted with portion of 3 acre 28 *guntha* land abutting balance land on northern side of original vendor of 1 acre 30 *guntha*, leaving a piece of 2 acre 12 *guntha* in his own possession and ownership on the southern side of survey No.69.

5. According to the plaintiff, as threat had been posed to his ownership and possession over said southern portion of survey No.69 (gut No.329) *admeasuring* 92 *Are*, he had instituted suit seeking declaration of ownership and injunction in respect of the land in his possession.

6. It appears that upon aforesaid transactions, survey No.69 got divided into two parts survey No.69/1 and 69/2. In the

circumstances, initially, under impression that area of 92 *Are* formed part of survey No.69/2, plaintiff had filed suit claiming said area of 92 *Are* from survey No.69/2. However, subsequently he realized and resiled to a situation where he considered land to be survey No.69 and in the same he was owner and in possession of 2 acre 12 *guntha*. Accordingly, an amendment to the plaint had been carried out pointing out that survey No.69 on consolidation got converted into block/gut No.329, *admeasuring* 3 Hectare 39 *Are*.

7. In the written statement, the defendants had contended that what the plaintiff had been left with is only 12 *Are* land in survey No.69/2 and that the plaintiff having regard to various transactions referred to earlier, could not have staked claim to more than that area of survey No.69/2. The defendants' thrust, however, was on that although transactions have been entered into ostensibly of sale to the plaintiff by his vendor, said transactions were to cover up money lending transactions by plaintiff who indulged into the same and that the sale deeds were nominal in nature and no rights could be said to have been transferred under the same to the plaintiff. The plaintiff had never been put in possession of the land, purportedly purchased by him under the deeds of sale. According to them, this is

discernible from revenue record from the dates of the deeds, at least up to 1989 wherein vendor of the plaintiff was continued to be shown to be in possession. It was around 1989, the revenue entries in the cultivation column started showing plaintiff's possession, however, those could not be relied on having regard to real intention of the parties. The defendants lay heavy stress on a document which is at Exhibit-101, wherein according to them, real nature of transaction stands acknowledged by the plaintiff. The defendants additionally referred to revenue proceedings wherein according to them, plaintiff is claiming only 12 Are land in respect of survey No.69/2.

8. The sale deeds, referred to hereinbefore, have been placed as Exhibits – 96, 97, 98 and 99. The document acknowledging the transaction to be a loan transaction is placed as Exhibit-101 and the revenue proceedings memo of appeal, was at Exhibit-120. The plaintiff had adduced evidence of himself as well as of the stated neighbouring land holders. The defendants examined defendant No.1, scribe of Exhibit-101 as Defendant Witness No.2 and the stated adjoining land holder Madhav as Defendant Witness No.3.

9. Based upon aforesaid pleadings, the trial court had framed

as many as seven issues, *inter alia* about purchase of 6 acre lands by plaintiff, about sale of land of 3 acre 28 *guntha* to Shriram Maroti by the plaintiff and could defendants show said property sold is not part and parcel of survey No.69/2 and that whether sale by original land holder Maroti Mahadu on 3rd June, 1975 to the plaintiff had been with the condition to re-purchase and whether the defendants had proved that the plaintiff was owner in possession of 12 *Are* land of survey No.69/2 and whether obstruction at the hands of defendants had been proved by the plaintiff. The issue with regard to purchase of land by the plaintiff had been decided in the negative holding that the plaintiff did not prove that he had purchased lands. The sale by plaintiff's vendor to vendee of 1983 was held to be proved and that the suit property is not part and parcel of survey No.69/2. The sale deed of Maroti Mahadu to the plaintiff was with a condition of repurchase and that the plaintiff could not prove obstruction by the defendants.

10. The trial court had considered that prior to 1989 there is no entry in the revenue record in respect of possession of the plaintiff and it is only recent record which may favour the plaintiff. The trial court considered that Plaintiff's Witness No.2 cannot be said to be adjoining land holder having regard to his

cross-examination. Whereas, the defendants have been able to show that Madhav – DW 3 can be said to be adjoining land holder. Accordingly, it was considered by the trial court that the plaintiff cannot be said to be in possession, immediately after the sale deeds have been executed and the subsequent record as such, in respect of his possession over the suit land may not be helpful to the plaintiff, having regard to evidence on record.

11. The trial court further considered that the defendants, in their pleadings had referred to that a document acknowledging that it is a loan transaction had been executed by the plaintiff, however it was missing and subsequently, after tracing it out, the same has been brought on record and has been duly proved, coupled with that the trial court has also, with reference to certain statements appearing in the plaintiff's evidence, considered that said document to be proved, observing further that signatures on the document at Exhibit-101, on comparison, can be said to be similar. The trial court, as stated above, held the sale deed to be duly executed in favour of Shriram Madhav by the plaintiff in respect of 3 acre 28 *guntha*. The trial court, with reference to certain calculations in respect of area of survey No.69/2, considered that the defendants proved that suit field is not part of survey No.69/2 and further considered that issue

No.5 does not survive. The court considered that since the transactions were nominal and were only paper transactions by way of security, as such, the plaintiff was not entitled to the relief of injunction.

12. Appeal of the plaintiff as referred to herein above had been allowed by the judgment and decree passed by the appellate court on 17th October, 1997 setting aside judgment of the trial court, decreeing the suit with declaration that the plaintiff is owner of 91 *Are* land on the southern side of Gut No.329, corresponding to old survey No.69 and consequently the defendants were restrained from obstructing plaintiff's possession of said 91 *Are* land. The appellate court had framed a point for consideration whether the trial court erred in holding that the plaintiff was not owner and in possession of 92 *Are* land and another whether the trial court was right in holding the transaction was a transaction of loan.

13. The appellate court, while reversing the findings by the trial court, has considered that there are three registered sale deeds giving specific boundaries and areas, in favour of the plaintiff and that there is no reference to any loan transaction in the same. The appellate court further has considered that had it

been really a loan transaction, the sale by the plaintiff to Shriram Maroti would not have been of a fraction of land. Had the transaction been really of security for repayment of loan, it would have been in accordance with purchases made by the plaintiff. The appellate court considered that there is revenue record indicating plaintiff's possession over the suit land, origin of which can be traced to the registered deeds in his favour and that details of crops taken by the plaintiff have also appeared in the record and the entries clearly depict that the plaintiff and defendants were being shown in possession of separate pieces of lands.

14. The appellate court, had extensively dealt with evidence with regard to document at Exhibit-101 and had come to the conclusion that it cannot be said to have been duly proved, having regard to contemporaneous attending circumstances in the matter. The court, on appreciation of evidence had considered that the trial court had been in error in taking into account the document at Exhibit-101 merely having been exhibited to be duly proved. It had considered that the scribe of Exhibit-101 appears to be related to the defendants. Further that evidence does expose ignorance about the document considered to be proved. Evidence of so called attesting witnesses, who,

according to plaintiff, too are related to the defendants is at variance and is not reliable. The appellate court has considered that the occurrence and production of the document to be intriguing and that it can hardly be said to have been proved for want of following proper procedure by the trial court. Taking overall view of the matter based on evidence as has come on record, the appellate court considered that the appreciation by the trial court may not stand the test of facts and law, and thus had set aside the judgment and order of the trial court and decreed the suit.

15. Mr. M. V. Deshpande, learned advocate for the appellants – defendants with quite lucid flair, refers to that there are about five substantial questions of law, which have been framed by this court, as are appearing from serial No.II to VII. He contends that as required under relevant rules, particularly Order XLI, Rule 31 of the Code of Civil Procedure, the appellate court has not determined points for consideration and has tersely framed two points, and non framing of points for determination tends to prejudice the defendants' case since it cannot be said that all the aspects, required to be considered in the matter, can be said to be covered, with such points.

16. With reference to ground No.VI, he contends that having regard to that the plaintiff had purchased land of survey No.69/2 and had sold 3 acre 28 *guntha* from survey No.69/2, he could not be said to be in possession of the area more than 12 *Are* from survey No.69/2 and as such, his claim for declaration and possession in respect of 92 *Are* land is misconceived. He submits that the plaintiff himself cannot be said to have staked claim to an area more than 12 *Are* land and as such, decision of the appellate court is inappropriate in reversing the findings with regard to possession over the suit land and that under the circumstances, the plaintiff is estopped from claiming anything more than 12 *Are* land.

17. Mr. Deshpande, vehemently places thrust on Exhibit-101 and contends that having regard to the same, it has to be considered that the plaintiff had been money lender and Exhibit-96, 97, 98 were the transactions by way of security. Learned advocate has contended that taking into account evidence of the plaintiff wherein he had sought an excuse in respect of Exhibit-101 stating that it might be a signed paper by him from a bag which had been lost, is indeed an indication of acceptance of execution of document. He submits that under the circumstances, denial by the plaintiff of his signature over the

document is merely a plea to get over and decline execution. He submits that it cannot be said that production of Exhibit-101 had no basis in the pleadings of the defendants. On the contrary, it had been made clear that the documents could not be placed on record initially for it was known to deceased Maroti Mahadu and it was in his possession and after his death for quite some time, it could not be traced. Since the defendants were aware about that execution of transactions was by way of security and that there is a document in respect of the same, it was referred to in the pleadings. Moreover, the document has been duly proved by evidence of the scribe. Once having proved and no evidence being given in rebuttal, said document has been rightly relied upon by the trial court and the appellate court has committed grave error in substituting its finding over the same.

18. On the other hand, learned advocate Mr. Sabnis appearing for the plaintiff refers to chronological order of the transactions and the total land holding in survey No.69 and the corresponding gut No.329, and contends that the plaintiff is not staking claim to more than 2 acre 12 *guntha* land in gut No.329 on conversion of survey No.69. Contention on behalf of the defendants is that the plaintiff is claiming 92 *Are* land from survey No.69/2 and 80 *Are* from survey No. 69/1, is figment of imagination and has no

basis at all. He contends that the plaintiff had been fair enough to accept the position that total holding of the original land holder Maroti Mahadu in survey No.69 was 7 acre 30 *guntha*, which has been converted into gut No.329 and after the transactions referred to hereinabove, the plaintiff is claiming 2 acre and 12 *guntha* from survey No.69 or for that matter gut No.329 and not more. He further clarifies that the plaintiff is not claiming any land more than 2 acre 12 *guntha* from land, which belonged to original land holder Maroti Mahadu from 7 acre 30 *guntha* in survey No.69. He submits that it is fallacious claim by defendants. Plaintiff is mischievously tried to be dubbed as money lender. He submits that earlier on, during proceedings, plaintiff basically being an agriculturist was a confused man with respect to maintenance of revenue record and had not been sure about survey numbers being given on purchases being made by him. He submits that the plaintiff is a plain and simple man and at no point of time had any intention to make purchases of the lands for security of money lending and had it really been so, the same would have been depicted in the transactions entered into. There is not even a whisper in the transactions. According to learned advocate for the plaintiff Exhibit-101 is a manufactured document, which is not at all executed by the plaintiff. The

appreciation by trial about signature being compared and considered to be similar to the signature of the plaintiff is absolutely baseless and is perverse. He submits that revenue entries right from execution of sale deeds show the position as ought to appear on purchases of lands by him and accordingly they started appearing in the record. Trial court has overlooked this factual aspect in record. He submits, it cannot be denied that all along from the dates of sale deeds and on the date of suit, the plaintiff, has been in possession of the property. Mr. Sabnis, submits that the defendants are estopped from laying evidence against documents on record. He, for said purpose, refers to various provisions of the Indian Evidence Act. He submits that in law, the ownership with the registered document stands transferred to the plaintiff. The possession in fact and on record as well as in law is with the plaintiff. His possession and the title was posed a threat by the defendants and under the circumstances, cause of action had arisen for the suit for declaration and injunction.

19. He submits, so called trump card Exhibit-101 of the defendants and its veracity has been exposed by the appellate court by considering evidence led. He submits that apart from the signature being widely different, surrounding circumstances

clearly indicate that there is no semblance of truth in the defence taken by the defendants about said document. He submits that the defendants are not sure about their case in respect of execution of said document, for, it was long after the sale deeds were executed in favour of the plaintiff, a theory has been developed that the vendor had been to plaintiff in order to have a written document in respect of nature of the transaction. There is variance in evidence about execution of document by the scribe as well as the defendants. According to him, the appellate court has considered the relevant aspects in respect of execution of document and its veracity in detail and has arrived at a conclusion that it cannot be said that the document is duly proved. He submits that it is a matter of appreciation of evidence by the courts, which can seldom form part of appreciation by the second appellate court. Additionally, he submits that the revenue record upon which a lot of emphasis is sought to be placed by the defendants is in favour of plaintiff. Having regard to the position emerging on record itself, for, it cannot be denied that survey No.69 has been on consolidation converted into gut No.329 and the area of the land as has been stated in the pleadings by the parties and the one appearing on consolidation does not differ. As such, the ado being made in respect of the so

called statements made before the revenue authorities in respect of survey No.69 can hardly be of any significance. It is an attempt by the defendants to create a mountain out of a mole hill. That does not change or alter the factual position and materially affect the merits of the case in the proceedings.

20. Upon analysis, emerging factual situation clearly depicts that total land area in erstwhile survey No.69, situated at village Umberga Khojan, is 7 acre 30 *guntha* and it was the entire holding of Maroti Mahadu. Maroti Mahadu in turn had parted with about 6 acre of land from the same, forming southern part of survey No.69. Initially, it appears, he had parted with 2 acre with Ramrao Lingoji and in June, 1975, Maroti Mahadu had sold a portion of 2 acre land to the plaintiff. On the very day, Ramrao Lingoji, as well sold out to the plaintiff the piece of two acre land purchased by him from Maroti Mahadu. Thereafter, Maroti Mahadu sold another piece of 2 acre land to the plaintiff. Thus, in aggregate, the plaintiff became owner of 6 acre of land from survey No.69.

21. As such, it is not in dispute that the original holder of survey No.69 had transferred southern piece of land of survey No.69 admeasuring 6 acre, keeping with him an area of 1 acre

30 *guntha*, forming the northern side of survey No.69.

22. Subsequently, entire survey No.69 got converted in consolidation proceedings into gut No.329 admeasuring about 7 acre 30 *guntha* or a *guntha* or two more.

23. Around, 1983, plaintiff sold an area of 3 acre 28 *guntha* to Shriram Maroti. It was the northern portion abutting the original land holders' 1 acre 30 *guntha*, referred above, and as such, the land holding of original land holders' family - Shriram Maroti became around 5 acre 18 *guntha*.

24. However, it appears that subdivisions were not being considered according to the transactions and the holding of the original land owner. It appears that there was some confusion and mis-belief about the area which was being considered to be falling in survey No.69/2 and 69/1. As such, upon disturbance to his possession in the land holding, based on assumption of said area of survey No.69/2, the suit initially was instituted referring to 92 *Are* in survey No.69/2. Since, some errors crept in while making statements before revenue authorities, wherein it appears some statements went through plaintiff not in consonance with division of areas into survey No.69/1 and 69/2. However, this, in the given circumstances, lose to have any

significance. For, parties are not at dispute that about total land holding in survey No.69 and about purchases made by the plaintiff of about 6 acre, subsequently him parting with 3 acre 28 *guntha*. As such, his holding after these transactions in survey No.69 continues to be of 2 acre 12 *guntha*. Upon realizing this, he had taken up corrective steps accordingly and brought in tune with the record.

25. Plaintiff's case stand amply borne out from the area, that has been depicted on conversion of survey number 69 into gut No.329, which continues to show area of around 7 acre 30 *guntha*. There is no dispute, rather it appears to be an admitted position that entire survey No.69 has been got converted into gut No.329.

26. The appellate court has considered that by own saying of the defendants, after the execution of the sale deeds, survey No.69 came to be divided into two parts i.e. survey No.69/1 and 69/2 giving an indication that the possession had been parted with, otherwise, there was no reason to divide the land into parts, if those were to be nominal.

27. Apart from the above, it will have to be considered that the

appellate court has also found that immediately after the sale deeds had been executed in favour of the plaintiff, revenue record had started depicting the same as against finding recorded by the trial court. The appellate court had noticed that there were consistent entries in 7/12 extract right from 1976 onwards showing that the plaintiff was cultivating these lands and the appellate court had referred to the entries along with details of the crops taken. The appellate court has appreciated that the revenue entries depict the possession of the plaintiff and the defendants in respect of separate pieces of lands.

28. For various reasons, the appellate court has considered that the document Exhibit-101 cannot be said to be duly proved. The appellate court has considered that signature on Exhibit-101 has been denied by the plaintiff. The appellate court has seen lot of flaws in consideration of said document, particularly its purported impounding in the absence of endorsement of the judge. The appellate court has also suspected veracity of the contents of the document considering that there was no impediment to execute such a document immediately upon execution of the sale deeds and the time distance at which it is purported to have been executed, appreciated that it considerably weakens sustainability of the contents of the

document. The appellate court has noticed variance in the evidence of so called attesting witnesses, so also has suspected the understanding capacity and literacy level of the scribe. On appreciation of the evidence, the appellate court has held that the document Exhibit-101 has not been proved.

29. It will have to be referred to that the appellate court has considered that not only the document Exhibit-101 itself was deficient, but also there are no pleadings in respect of amount to be repaid, whether any interest was to be borne or for that matter what is the outer date by which re-conveyance was expected. This, in conjunction with the other observations by the appellate court about Exhibit-101 which has been contended to be executed on 25th January, 1976, by the plaintiff in favour of Maroti Mahadu, occurrence of events and the record does not espouse confidence in the submissions of the defendants. It may be that in an anxiety to explain the occurrence, if at all it comes to be explained, some reason has been put forth, however, in the face of other evidence, which has come on record by which it cannot be said that the document Exhibit-101 can be said to be duly proved.

30. Exhibit-101 has been dispelled by the appellate court

giving reasons, which cannot be said to be unsound and for that matter not based on any evidence. The appellate court has considered the aspects involved in respect of the same in the perspective as they appear from record and evidence.

31. The appellate court upon appreciation of evidence in respect of Exhibit-101 has come to a definitive conclusion about the transactions are not of loan or money lending transactions and further that save and except the transactions in respect of survey No.69 / gut No.329, the defendants are not in a position to bring in any evidence that the plaintiff had any such transactions with other persons in respect of other lands.

32. Having regard to appreciation by appellate court placed on Exhibit-101, the substantial question of law as appearing under Grounds No.V and VII stand answered as aforesaid. It cannot be said that the appellate court has committed any error in appreciating that Exhibit-101 as not been properly proved and under the circumstances, ground No.V does not carry any substance.

33. In the circumstances, having regard to the judgment and reasons given by the appellate court, it cannot be said that the appellate court had not framed relevant points at all. The points

framed had taken within its fold all the aspects involved in the matter and have been dealt with accordingly by the appellate court and it can hardly be said that it has caused any prejudice to the defendants and that there are no points at all framed as required under Order XLI Rule 31 of the Civil Procedure Code.

34. Learned advocate Mr. Sabnis appearing for the respondent – plaintiff has placed heavy reliance on a decision of the Apex Court, namely 2011 (6) SCC 321 “Mahadev Govind Gharge & others V. Special Land Acquisition Officer”. Paragraphs No.16 and 17 thereof read thus -

“16. De hors the facts of the present case, it will be appropriate for us to examine the legislative scheme as well as the principles governing the application of Order XLI and its various rules of the Code of Civil Procedure, 1908 (in short the ‘Code’). The Code is a law relating to procedure and procedural law is always intended to facilitate the process of achieving the ends of justice. The Courts would normally favour the interpretation which will achieve the said object.

17. In the case of Sardar Amarjit Singh Kalra (dead) by LRs., v. Pramod Gupta (Smt.) (dead) by LRs. and others [2003 (3) SCC 272], a Constitution Bench of this court held,

26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.”

35. Quite a few judgments can be referred to viz., (2006) 3 SCC 224 “*G. Amalorpavam and Others V/s. R. C. Diocese of Madurai and Others*” wherein it appears to have been considered that even if the points for determination have not been specifically framed by the appellate court, but if the decision gives an indication of substantial compliance of the provisions of Order XLI, Rule 31 of the Civil Procedure Code where the appellate court had considered entire evidence on record and discussed the same while coming to the conclusion and giving findings supported by reasons, it cannot be said that the judgment is vitiated by absence of points for determination. The Supreme Court has held that the question whether in a particular case there has been substantial compliance to the provisions of Order XLI, Rule 31 of the Civil Procedure Code, has to be determined in the nature of judgment delivered in each case. Non compliance of the provisions may not vitiate judgment and make it wholly void and may be ignored if there has been substantial compliance with it and the higher appellate court is in a position to ascertain the finding of the lower appellate court. The Supreme Court had considered that the High Court recorded finding that the lower appellate court had considered evidence led by parties and had given finding to come to the conclusion arrived at. It noted that

the lower appellate court had independently considered the evidence and had given different findings on the basis of arguments which were advanced before it. It was further noted that there was detailed discussion for affirming the order of the trial court. Although the Supreme Court had not acceded to the request of the appellant, yet the court had made aforesaid categorical observations.

36. Decision reported in (2011) 6 SCC 321 "*Mahadev Govind Gharge and Others V/s. Special Land Acquisition Officer*" can be usefully referred to, wherein it appears to have been considered that after all Order XLI, Rule 31 of the Civil Procedure Code is a procedure and it is for the purpose of facilitating decision. The observations refer to that procedure and procedural law is always intended to facilitate the process of achieving ends of justice. The courts normally favour the interpretation which would achieve said object. The provisions of procedural law which do not provide for penal consequence in default of their compliance should normally be construed as directory in nature and should receive liberal construction.

37. Perusal of the decision by the appellate court shows that the appellate court had independently considered the evidence

and had given different findings on the issues framed by the trial court with reference to the record and the arguments advanced before it. The appellate court had considered evidence on record and has given finding to come to the conclusion arrived at.

38. Having regard to aforesaid, it cannot be said that so called deficiency in framing points for determination has affected merits of the case.

39. As such, second appeal stands dismissed. Pending civil applications also stand disposed of.

40. At this stage, Mr. Deshpande, learned advocate appearing for appellants – defendants seeks indulgence for continuation of the relief as has been operating hitherto for a further period of twelve weeks. As such, this order to take effect after a period of twelve weeks from today.

[SUNIL P. DESHMUKH, J.]