

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 508/2014

- 1] Vithal Yashwant Bhise
Age 65 years, Occ : Agri.
- 2] Machhindra Yashwant Bhise
Age 58 years, Occ:Agri
- 3] Dnyandeo Yashwant Bhise
Age 61 years, Occ : Agri.

R/o Katewadi, Tq. Jamkhed
Dist,Ahmednagar

.. APPELLANTS
[Orig.Deft.1 to 3]

Versus

- 1] Ramkishan @ Ramkrishna
Rangnath Bhise
Age 68 years, Occ;Agri
R/o Katewadi, Tq. Jamkhed
Dist.Ahmednagar
- 2] The Tahsildar Jamkhed
Taluka Jamkhed
Dist.Ahmednagar
- 3] The Collector, Ahmednagar
Tq. And Dist.Ahmednagar

.. RESPONDENTS
[R.1 Orig.Plttf,R.2&3
orig.defts.4 & 5]

...

Shri B.V.Wagh,Adv. for appellants
Shri P.M.Gaikwad,Adv. for respondent no.1
Shri P.P.More,AGP for respondent no.2

...

CORAM : N.W.SAMBRE,J.

DATED : 1st JULY, 2015

ORAL ORDER :-

The Second Appeal can be disposed of at admission stage with consent of parties.

2] The substantial question of law that is sought to be raised by present appellants is whether lower appellate Court was right in deciding appeal by cryptic judgment particularly in the light of the scheme of Section 93 Order 41 of Rule 31 of Code of Civil Procedure. So as to canvass that it was expected of the learned lower appellate court to reconsider and reappraise entire pleading, factual matrix and the evidence that was recorded, he has relied upon judgment of **Apex Court in the matter of Santosh Hazari V/s Purushootam Tiwari (Dead) by L.Rs., reported in AIR 2001 SC 965(1)** and in particular relevant paragraph-15 of the said judgment, which reads thus :

“15. A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral

evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary*, AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must

weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact (See *Madhusudan Das Vs. Smt. Narayani Bai & Ors.*, AIR 1983 SC 114). The rule is - and it is nothing more than a rule of practice- that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact. (See *Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh*, AIR 1951 SC 120). Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present Section 100

substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one."

3] According to him, the said inaction on the part of the learned lower appellate court amounts to denial of hearing and as such sought remand of the present Second Appeal.

4] The learned counsel for the respondents though agreed to the proposition that the Second Appeal is required to be entertained only on the question of law. According to him, lower appellate court though by short judgment has dealt with issue sought to be raised before it. According to him, the judgment and the challenge is already implemented and prayed for dismissal of the appeal.

5] Having considered rival contentions of the parties, it is required to be noted that the point which was considered by lower appellate court was as regards provisions of Section 85 of the Bombay Tenancy and Agricultural Lands Act, that is in

relation to the jurisdiction of the civil court in entertaining the dispute in relation to the tenancy.

6] The lower appellate court has inferred that the nature of dispute is civil and as such even if touching provisions of the said Act, while reaching to such conclusion, lower appellate court neither considered factual matrix, documentary and oral evidence on record. It is also required to be noted that the judgment lacks application of mind particularly qua the evidence brought before it. As such, in my opinion, case for remand is made out.

7] In view of above, judgment dated 10/7/2014 passed by Principal District Judge, Ahmednagar in R.C.A.No.19/09 is hereby set aside. The appeal stands restored to the file of Principal District Judge, Ahmednagar who is directed to decide the Appeal as expeditiously as possible, in any case within three months from the date of appearance of the parties before it.

8] The parties hereby agree that they shall cooperate with the lower appellate court in reaching to decision in the appeal and shall not seek any adjournment. The parties further agree that they shall appear before lower appellate court on **13/7/2015**.

9] The parties further agree that they shall maintain status quo as on today till disposal of appeal by District Judge, Ahmednagar.

10] Present Second Appeal stands allowed in above terms.

(N.W.SAMBRE,J.)

umg/