

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.517 of 2013
(Sau. Vanita Ransing Atole v. Shri Ransing Mansing Atole)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri R.S. Kate, Advocate for Appellant.
Ms Manjiri Paranis, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Dated : 7th July, 2015

1. On 30-6-2015, this Court had passed an order as under :

“ The substantial question of law involved in the matter is whether the appellate Court was right in setting aside the decree passed by trial Court without reversing the findings of fact recorded by the trial Court.

Put up this matter on 07.07.2015 for final disposal if the parties are prepared for remand of the matter.”

2. In response to the aforesaid order, the learned counsel for the respondent appears and waives service of notice.

3. The substantial question of law is already framed. Hence, Admit. Heard finally by consent of the learned counsels appearing for the parties.

4. The learned counsel for the respondent could not point out that the lower Appellate Court has considered the findings recorded by the Trial Court on material aspects of the matter. The

judgment and order passed by the lower Appellate Court, therefore, suffers from non-application of mind, resulting in failure of justice. Thus, the same cannot be sustained and will have to be quashed and set aside with an order of remand.

5. In the result, the second appeal is allowed. The judgment and order dated 3-5-2013 passed by the lower Appellate Court in Regular Civil Appeal No.113 of 2011, is hereby quashed and set aside. The matter is remanded back to the lower Appellate Court to decide it on its own merits after taking into consideration the findings recorded by the Trial Court.

Judge.

Lanjewar