

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)**

SECOND APPEAL NO. 747 of 2012

Ramesh Radkabhai Vartha,
Age 32, Occupation-Agriculture,
R/o. Silli, Kapariapada,
Dadra & Nagar Haveli, Silvassa

..

APPELLANT
Org. Pltff.

.. **Versus** ..

Babubhai Mahadubhai Raut,
Age 40, Occupation : Agriculture,
R/o. Galonda, Zaripada

..

RESPONDENTS
Org. Deft.

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Mr. Mandar Soman, Advocate, for appellant.
Mr. Girish R.Agrawal, Advocate for Respondent

CORAM : R.K.Deshpande, J.
DATED : 24th JUNE, 2015.

ORAL JUDGMENT

Admit.

Heard finally on the substantial question of law as to
the remand of the matter to the trial Court of fresh
consideration.

2] Regular Civil Suit No. 15 of 2001 was dismissed by the trial Court on 30.09.2010 and the defendant was directed to refund an amount of Rs.40,000/- towards compensation along with 12% interest from the date of the suit till the realization of the amount. Though the lower appellate Court dismissed Regular Civil Appeal No. 8 of 2010 on 05.05.2012, it also sets aside the relief granted regarding compensation by the trial Court without there being any cross objection. The plaintiff is before this Court in this second appeal.

3] After hearing the learned counsels appearing for the parties, it is apparent that the lower appellate Court could not have set aside the decree passed by the trial Court awarding compensation without there being any cross objection. The defendant had basically raised a plea of 'undue influence'. The trial Court did not frame any issue on this aspect and the appellate Court has also not considered this aspect. Though, both the courts below have held that the agreement has been proved, the appellate Court reversed the finding recorded by the trial Court on all other issues. In the light of this factual position, the question of remand of the matter before the trial Court to frame an additional issue of 'undue influence' in execution of the

agreement dated 24.12.1998 is required to be considered.

4] The learned counsels appearing for the parties submit that though there are pleadings made in the written statement that the defendant was an illiterate person and the agreement was got executed by exercise of undue influence, the issue was not framed by the trial Court. The suit bears material issue to be decided in the light of the provision of Section 16 of the Indian Contract Act, 1872. Both the learned counsels, therefore, agreed for the remand of the matter back to the trial Court to frame an additional issue and to decide the matter afresh.

5] In view of above, the second appeal is allowed. The judgment and order dated 05.05.2012 passed by the Principal District Judge, Dadra and Nagar Haveli, Silvassa, in Regular Civil Appeal No. 8 of 2010 and the judgment and order dated 30.09.2010, passed by the Civil Judge, Dadra and Nagar Haveli, Silvassa, in Regular Civil Suit No. 15 of 2001 are hereby quashed and set aside. The matter is remitted back to the trial Court to decide the Regular Civil Suit No. 15 of 2001 afresh after framing an additional issue of 'undue influence'.

The parties to appear before the trial Court on 20th July, 2015. The trial Court to decide the suit within a period of 8 months from the date of first appearance of the parties before it. All the contentions are left open to be decided by the trial Court. No order as to cost.

(R.K.Deshpande, J.)

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Rvjalit/P.A.