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

***SECOND APPEAL NO. 627 OF 2012
with
CIVIL APPLICATION NO. 1199 OF 2012***

Vasant Aatmaram Jadhav & Ors. ... Appellants/Applicants.

V/s.

Vasudev Govind Joshi & Ors. ... Respondents.

Mr. V.S. Kapse for the Appellants/Applicants.

Mr. S.S. Patwardhan for the Respondents.

CORAM : N.M. Jamdar, J.

03 May, 2016.

Oral Order :-

Heard the learned Counsel for the parties. Admit on substantial question of law framed as under :-

Whether the First Appellate Court was right in disposing of the Appeal based only on the statement made by the Appellant in the written statement to conclude that the document in question was only a mortgage deed and not a conditional sale ?

2. The learned Counsel for the Respondents waives service.

3. By consent taken up for final disposal forthwith. The paper-book dispensed with.

4. The Respondents filed a Suit bearing No. 113 of 2000 in the Court of Civil Judge, Junior Division, Gadhinglaj for redemption of mortgage. According to the Respondent – Plaintiff, the Suit land was mortgaged to the Appellants by a deed dated 18 January 1975. The Appellants appeared in the Suit and filed written statement. According to the Appellants, the document in question was a mortgage for period of 5 years and after period of 5 years, for failure of repayment, it was a document of sale. The learned Civil Judge framed issues and by a detailed discussion came to the conclusion that the document was a deed of mortgage simplicitor and not conditional sale after period of 5 years. A Suit was accordingly decreed by judgment and decree dated 19 March 2004.

5. The Appellants thereafter filed an Appeal No. 40 of 2004 in the District Court, Gadhinglaj. The learned District Judge framed one issue as to whether the Respondent proved that she had executed document of mortgage in favour of the Appellant and answered the issue in affirmative and held that the Respondent was entitled for redemption of mortgage and thereafter, by a short judgment dismissed the Appeal. The learned District Judge held that the matter need not be considered in detail as the Appellant had admitted that the document is a mortgage. The learned District Judge held that since parameters necessary for English mortgage are present and the document being a mortgage, the

Respondents are entitled to redeem the same. The case of the Appellant for improvement in the land was dismissed for lack of counterclaim.

6. The issue as to whether a document is a mortgage or conditional sale arises often for adjudication in the Civil Courts and there is a substantial body of law developed in this vexed area of law. The Courts look into the language employed in the document as well as the conduct of the parties and various other parameters to interpret the document. The learned First Appellant Court unfortunately has side-stepped all these requirements and has only looked at the written statement. I have gone through the written statement. Thought the Appellant has referred to the document as mortgage, it is the case of the Appellant that after period of five years, it was to become a document of sale. There is clearly no such admission as referred to by the First Appellate Court to warrant such a summary dismissal of the Appeal. The written statement had to be considered in its totality and the issue had to be decided with reference to the evidence on record as was done by the learned Civil Judge. Even though the First Appellate Court had passed the judgment and order confirming the decision of the trial Court, the detailed adjudication of rival contention as regard the nature of document was necessary. It is settled that not giving reasons in support of this decision by the First Appellate Court gives rise to a question of law.

7. In the circumstances, for absence of adjudication of the rival contentions of the parties based on pleadings, evidence and such other relevant material, the question of law framed in this Second Appeal will

have to be answered in affirmative.

8. Accordingly, the judgment and order passed by the learned District Judge, Gadhinglaj dated 24 November 2011 is quashed and set aside. The Appeal filed by the Appellants bearing Regular Civil Appeal No.40 of 2004 is restored to the file of the learned District Judge, Gadhinglaj. Parties will appear before the learned District Judge on 13 June 2016.

9. It is clarified that what is observed in this order is only reasons for remand of the proceedings to the Appellate Court and all contentions of the parties as regard the merits of the Appeal are kept open.

10. After the appearance of the parties before the learned District Judge, the learned District Judge will make an endeavour to dispose of the Appeal preferably within period of one year from that day.

11. As far as the grant of interim protection is concerned, the learned Counsel for the Respondents submits that no execution proceedings have been filed. If the Respondents propose to take any coercive steps in that regard, it will be open to the Appellants to make appropriate application before the learned District Judge.

(N.M. Jamdar, J.)