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

**SECOND APPEAL NO. 598 OF 2013
WITH
CIVIL APPLICATION NO. 10686 OF 2013**

Bhujang Daji Mundhe ... APPELLANT

VERSUS

Shivling Maroti Ugalmugale ... RESPONDENT

Mr. L.V. Sangeet h/f Mrs. M.L. Sangeet, Advocate
for Appellant.

Mr. R. K. Jadhavar, Advocate for Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 13th SEPTEMBER, 2017

ORAL ORDER :

Upon hearing the learned counsel for the appellant, in my opinion, following points needs consideration:

"Whether both the courts below have committed an error apparent on the face of record in the suit for specific performance filed by the Respondent-plaintiff, which came to be decreed, confirmed in appeal, as such, this Second Appeal."

2. After having heard the respective counsels for some time, it is noticed that the agreement

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Exhibit 45 speaks of handing over of possession by the Defendant to the Plaintiff, however, said document was neither registered nor impounded, during the course of conduct of the trial, based on which both the courts below have passed a decree for specific performance.

3. The said act on the part of both the courts below was contrary to the provisions of Article 25 and Section 32(a) of the Bombay Stamp Act, 1958 and Section 17 of the Indian Registration Act, 1908.

4. In view of above, the parties are at consensus that both the judgments can be quashed and set aside and matter can be relegated back to the learned trial court for deciding it afresh from the point of leading evidence.

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5. It is expected of the learned trial court to follow procedure as regards the impounding of document Exhibit 45 and then proceed with recording evidence after following the procedure as prescribed under the Bombay Stamp Act, 1958.

6. In view of above, both the judgments i.e. the judgment passed by the learned Civil Judge, Junior Division, Bhoom on 13.08.2003 passed in Regular Civil Suit No.175/1995 and the judgment dated 28.01.2013 passed by the District Judge-1, Osmanabad in Regular Civil Suit No.153/2003, are hereby set aside. The matters stands restored to the file of Civil Judge, Junior Division, Bhoom before whom the parties agree to appear on 29.09.2017

7. The said Court is expected to decide the suit after appearance of the parties, preferably within nine months thereafter. With

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the above observations, the Second Appeal stands partly allowed and disposed of.

(NITIN W. SAMBRE, J.)

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