

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.156 OF 2016

**WITH
CIVIL APPLICATION NO.256 OF 2016
IN
SECOND APPEAL NO.156 OF 2016**

Shri Ramesh Vishram Jadhav

...Appellant
(Original Defendant)

vs.

Sou. Aasavari Prakash Suryavanshi

...Respondent
(Original Plaintiff)

....

Ms. Jai Kanade, i/b. Akshay Petkar, for the Appellant/Applicant.

Mr. Sandesh Patil, a/w. Mr. Chintan Shah, i/b. Ms. Anusha Amin, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED : 27 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2. Learned Counsel for the Appellant tenders a draft amendment to incorporate additional grounds of challenge, including the ground urged before this Court at the hearing. The amendment is allowed. The Appellant shall carry out the amendment within a period of two weeks from today.

3. The main question of law pressed in the present Second Appeal is that, despite the Appellant (Original Defendant) having raised a specific plea of want of jurisdiction of the Trial Court on the ground of pecuniary jurisdiction based on the valuation of the property, and the issue having decided by the Trial Court against the Appellant and the Appellant having raised a substantial ground of challenge in that behalf before the first Appellate Court, there is no discussion in the first Appellate order of this aspect.

4. Learned Counsel relies on the decision of the Supreme Court in the case of **Santosh Hazari vs. Purushottam Tiwari**¹. The Supreme Court in this case held that the first appeal is available as of right to the parties and unless restricted by law, the whole case of the parties in the suit is open for re-hearing on questions of both fact and law. The Supreme Court held that, in the premises, the judgment of the Appellate Court must display conscious application of mind and record findings supported by reasons on all issues along with the contentions put forth. There is no quarrel with this proposition. The judgment of the Appellate Court must reflect its conscious application of mind on all issues, which are raised before it. It is not sufficient for the Appellant, in this behalf, to show that the particular issue forms part of the challenge in the appeal. What is necessary to show is that the ground was pressed before the Appellate Court and arguments were advanced on the ground. If the particular issue is pressed and arguments are advanced, then it is the duty of the Appellate Court to apply its mind and enter a finding thereon supported by reasons. The converse is that if it is not so pressed and

¹ (2001) 3 Supreme Court Cases 179

argument so advanced, there is no need for the Appeal Court to enter any finding. The Court is not obliged to go through all grounds of challenge raised in the appeal on its own and deal with each ground. The impugned order of the first Appellate Court does not reflect that any such ground was pressed by the Appellant herein or any arguments were advanced before the Appeal Court on the question. To decide whether it was so or not, one has to go by what is reflected in the order and it is not open for any Court scrutinizing that order to go behind the order to find that out.

5. Learned Counsel for the Appellant submits that since this issue involves want of jurisdiction on the part of the Court to entertain the suit, the ground may be urged even in the second appeal. The question of jurisdiction, in the present case, is not a pure question of law. It is a mixed question of law and fact. The main thrust of the argument in support of the Appellant's case of want of jurisdiction is the purported valuation made by the Respondent (Original Plaintiff) of her suit. Correctness of such valuation is a question of fact. It is permissible for the party challenging it to give up his case. Not raising of any challenge in this behalf before the first Appellate Court, thus, finally settles the issue. It is not open thereafter to raise it again in the second appeal.

6. In the premises, there is no merit in the Second Appeal and the same is dismissed. No order as to costs.

7. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)