

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

**FIRST APPEAL NO. 296 OF 2017
WITH
CIVIL APPLICATION NO. 987 OF 2017
IN
FIRST APPEAL NO. 296 OF 2017**

Mr.Dhokal Rupjibhai Dungarkar

...Applicant/Appellant

Versus

Mr.Chaita Rupji Dungarkar

...Respondent

.....
Mr.Girish R. Agrawal for the Appellant.
Ms. Prabha U. Badadare for the Respondent.
.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 28, 2017**

P.C. :

1. This First Appeal is directed against the judgment and order dated 25.07.2016 passed by the learned Civil Judge, Senior Division, Dadara, Nagar Haveli and Silvassa, thereby dismissing Summary Civil Suit No. 66 of 2013.

2. The appellant/plaintiff has filed a Suit for declaration, partition and injunction. The said Suit proceeded ex-parte against the defendant. The appellant/plaintiff has tendered his evidence on affidavit dated

17.07.2015 alongwith a list of the documents. The said affidavit is taken on record. He has also mentioned in the affidavit that the contents of the documents are true and correct, which are exhibited at 3/1 to 3/14 and they all are required to be exhibited.

3. Perused the impugned order and the relevant papers. It is not clear from the record that whether these documents were exhibited or not by the trial Court. However, it appears that the learned Judge while passing the order has observed that the plaintiff did not rely upon any document to establish his case. The reasoning given by the learned Judge is factually wrong and hence, this case is required to be remanded back with the following order:

ORDER

- (i) The order dated 25.07.2016 passed by the learned Civil Judge, Senior Division, Dadara, Nagar Haveli and Silvassa of dismissing of the Suit is hereby set aside.
- (ii) The matter is remanded back to the trial Court. The trial Court on verifying the admissibility of the documents shall exhibit the same and accordingly lead in the evidence and thereafter to proceed with matter.

(iii) Parties to appear before the trial Court on 12.10.2017 at 11.00 a.m.

(iv) Ad-interim relief granted by this Court to continue till 12.10.2017 and the fresh application is to be made before the trial Court for interim relief.

4. First Appeal is disposed of accordingly.

5. In view of the disposal of the Appeal, Civil Application also stands disposed of.

6. Parties to act on an authenticated copy of this order.

(MRIDULA BHATKAR, J.)