

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

SECOND APPEAL NO. 443 OF 2017
WITH
CIVIL APPLICATION NO. 8432 OF 2017

Natha Santaram Pisal and Anr. ...Appellants

Versus

Shantilal Tukaram Pisal and Anr. ...Respondents

Ms. P. V. Langhe, Advocate for Appellants
Mr. Shaikh Ashraf Patel, Advocate for Respondent Nos. 1 and 2

CORAM : A.M. DHAVAL, J.
DATE: 13th DECEMBER, 2018

ORAL ORDER :

1. Heard learned Advocates at length at admission stage.

2. The only issue worth consideration at this stage is - whether the Appellate Court has followed proper procedure in conducting the first appeal. I frame it as substantial question of law and admit the appeal. With consent, it is taken up for final hearing and after hearing the advocates of parties, I answer it in the negative.

3. It is brought to my notice that after appearance in First appeal filed by defendant No.1, the plaintiff had filed cross objection challenging the findings of the trial court that he was not owner of the property. This cross objection has been properly filed within time and court fee is also paid. Learned Appellate Court Beed has decided the appeal without making any reference to the cross objection filed. When the defendant has filed cross objection it is his right to get the same decided on facts. The First Appellate Court is last court of fact findings. The learned First Appellate Court should have taken into consideration the cross objections and should have decided the same along with the appeal. This has not been done. Though the issue of ownership has been discussed, the glaring discrepancy of not deciding the cross objection cannot be cured. In the result, the issue is answered accordingly and Judgment and decree passed in the first appeal is set aside with directions to the First Appellate Court to decide the appeal along with the cross objection. The Second Appeal is accordingly disposed of.

4. The appellant shall be entitled to get entire Court fee refunded as per section 15 of the Maharashtra Court Fees Act.

5. The parties are directed to appear before the First

Appellate Court on 4th January, 2019 and the First Appellate Court shall decide the appeal with cross-objections within a period of two months from the receipt of the papers.

6. Registrar (Judicial) to send back record and proceedings immediately.

7. The protection granted by this Court by order dated 26th July, 2018 shall continue till 5th January, 2019.

8. Parties may seek further reliefs from the First Appellate Court.

9. Civil Application stands disposed of.

(A.M. DHAVALA)
JUDGE

mta