

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.311 OF 2017

Union of India,]
Through Ministry of Home Affairs,]
Rehabilitation Division,]
Having its old address at North Block,]
ND FFR Division, Jaisalmer House,]
Mansingh Road, New Delhi.]

AND

Having its new address at]
Rehabilitation Wing, FFR Building No.2,]
Jaisingh Road No.1, New Delhi.] Appellant

Versus

1. Kanwar Vilas Nath]
2. Kanwar Virajan Nath]
Both of Mumbai, Indian, Inhabitant,]
residing at 21, Gen. J. Bhosale Marg,]
Mumbai - 400 021.]
3. Syndicate Bank,]
A Banking Corporation,]
Constituted under the Banking Companies,]
(Acquisition and Transfer of Undertakings)]
Act, 1970, carrying on business at Mumbai]
and Zonal Office at Maker Towers, Cuffe]
Parade, Mumbai - 400 005.] Respondents

Mr. Anil C. Singh, Additional Solicitor General, with Mr. S.R. Rajguru, Mr. Sandesh Patil, Mr. D.P. Singh, Ms. Geetika Gandhi and Mr. Amogh Singh, for the Appellant-Union of India.

Mr. Iqbal Chagla, Senior Counsel, with Mr. Naval Agarwal, Mr. Ameet Hariani, Mr. Rishikesh Bidkar and Ms. Rajashree Ram, I/by M/s. Hariani and Co., for Respondent Nos.1 and 2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 27TH JUNE, 2018.

PRONOUNCED ON : 16TH JULY, 2018.

JUDGMENT :

1. Heard Mr. Anil Singh, learned Additional Solicitor General for the Appellant-Union of India, and Mr. Iqbal Chagla, learned Senior Counsel for Respondent Nos.1 and 2.

2. This Appeal takes an exception to the 'Judgment and Decree' dated 29th November 2016 passed by District Judge-4, Kalyan in Regular Civil Appeal No.9 of 2016, which was preferred against the 'Judgment and Decree' dated 30th April 2012 passed by the Civil Judge, Senior Division, Kalyan in Special Civil Suit No.99 of 2006.

3. The said Suit was filed by Respondent Nos.1 and 2 herein for the 'Decree of Redemption' in respect of the mortgaged properties and for directing the present Appellant to re-convey the said property in their favour, at their costs, by accepting the mortgage debt due and payable. Along with the 'Decree of Redemption' and possession of the suit properties, the ancillary reliefs were also claimed of taking of accounts,

adjusting the amount earned out of the suit properties towards mortgaged debt etc.

4. The suit properties are, totally seven in number, situate at Ambernath, Kalyan, consisting of the land together with the tenements, dwelling houses and buildings standing thereon and they are described in detail in paragraph Nos.1 to 5 of the plaint. These properties were left behind by its erstwhile owner Ahmed Abdul Karim Brothers, when, after the partition, he left for Pakistan along with his family members. The Government of India has, by notification dated 10th March 1955, under Section 12(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, acquired these evacuee properties and agreed to sell the same to late Rajnath, who has, along with his family, migrated to India during the partition. The properties were agreed to be sold for a consideration of Rs.50,11,000/-. On the date of the Agreement dated 14th August 1957, late Rajnath has paid the amount of Rs.2,00,000/- as and by way of earnest money. The balance amount of Rs.48,11,000/- was to be paid as per the time-schedule given in Clause No.3 of the 'Agreement'. Clause No.5 of the 'Agreement' further provided that, upon payment of Rs.28,00,000/-, the Vendor, i.e. the Government of India, would execute a 'Deed of Conveyance' in favour of the purchaser-late Rajnath and immediately after execution of the said 'Conveyance', Rajnath shall, at his own costs, execute in favour of the Government of India an 'English

Mortgage' of the said properties to secure the payment of the unpaid installments of the purchase price, with interest thereon. Clause No.10 of the 'Agreement' further provided that, the 'Deed of Conveyance' shall be a 'grant' for the purposes of the Government Grants Act, 1895.

5. It is undisputed that, in the arbitration between Ambernath Mills Corporation and the Custodian of evacuee properties, the Arbitrator had decided the further sum of Rs.18,00,000/-, which was to be payable by the said Ambernath Mills Corporation. This amount was agreed to be paid by late Rajnath to the Government of India and it was also agreed that, it would be considered as part payment of the consideration towards purchase of the said properties. Thus, total amount payable towards the consideration was Rs.48,11,000/-.

6. A 'Supplemental Deed' to the said 'Agreement' dated 14th August 1957 came to be entered into between the parties on 29th April 1959, by which the period for payment of remaining consideration amount was varied. Under this 'Supplemental Deed', the Government of India has acknowledged receipt of Rs.20,00,000/- from late Rajnath and it was agreed that the balance amount of Rs.48,11,000/- was to be paid in seven equal installments. Except for the variation in the schedule for payment of the remaining amount, all the terms and conditions of the earlier 'Agreement' dated 14th August 1957 remained unchanged.

7. Thereafter, on 6th April, 1960, the second 'Supplemental Deed' to the principal 'Agreement' dated 14th August 1957 was executed, by which it was *inter alia* provided that, the purchaser shall immediately, on execution of the 'Conveyance', execute in favour of the 'Vendor' an 'English Mortgage' of all the suit properties. Accordingly, on 21st April 1960, 'Conveyance Deed' came to be executed between the Government of India and late Rajnath and under this document, all rights, title and interest on the said properties were conveyed and transferred to late Rajnath, absolutely and forever, free from all encumbrances.

8. On the very same day, an 'Indenture of Mortgage' was also executed, by which late Rajnath mortgaged the suit properties, along with the plant and machinery and other installations and equipments, to secure re-payment of the amount of Rs.48,11,000/- due and owed by late Rajnath to the Government of India. This amount was agreed to be paid in seven installments of Rs.6,87,285/- each per year from 20th October 1961 to 20th October 1967, with interest @ 4.5% p.a., subject to the proviso for redemption, as contained therein. It was further provided that, it shall be lawful for the Government at any time, without any further consent of the 'Mortgagor', to sell the mortgaged premises either by public auction or by private contract and this 'power to sell' was deemed to be within the meaning of Section 69 of the Transfer of

Property Act, 1882. This 'power to sell' was to be exercised by the Government, if there was a default in payment of any installment of the said principal sum or part thereof on the dates mentioned in the 'Indenture of Mortgage' dated 21st April 1960 and it was to be exercised after the notice in writing is issued, as required under Section 69 of the Transfer of Property Act, 1882. It was also provided that, all other provisions ancillary to the 'power to sell', which are contained in Section 69 of the Transfer of Property Act, 1882, shall apply to this security.

9. On the next day of the execution of this document, i.e. on 22nd April, 1960, 'Possession Receipt' was executed by late Rajnath, acknowledging the receipt of possession. Thereafter, on 21st October 1969, the Government of India issued letter to late Rajnath, granting extension of time for payment of the balance amount and further gave no objection to late Rajnath for getting a loan from the Syndicate Bank upto a maximum amount of Rs.40,00,000/- against the security of the assets of the Mills.

10. On 8th September 1972, the 'Indenture of Re-conveyance' came to be executed between late Rajnath and Government of India, by which the Government released and re-conveyed to late Rajnath the two properties being 'Ahmed Silk Mills' and 'Plot No.11' for his use absolutely. Thereafter, on 8th September 1972, another 'Indenture of Mortgage'

came to be executed between late Rajnath and Syndicate Bank, by which these two properties being 'Ahmed Silk Mills' and 'Plot No.11 (Part)' were mortgaged by late Rajnath with the Syndicate Bank to secure the loan amount of Rs.40,00,000/-. On 8th September 1972, the 'Indenture of Modification and Additional Security', supplemental to the 'Indenture of Mortgage' dated 21st April 1960, was executed by late Rajnath in favour of the Government of India providing that the sum of Rs.53,07,705/-, which was then due and owing by late Rajnath to the Government of India, would be paid by five installments specified therein; the first installment of which was to be paid on or before 20th October 1972 and the last installment was to be paid on or before 20th October 1976. Clause Nos.2 and 3 of the said 'Agreement' provided that, the mortgage was in the form of 'English Mortgage' and the properties were conveyed to the Government of India as and by way of security, subject to the Mortgagor's right of redemption.

11. On 20th June 1975, the Government of India issued a letter to late Rajnath to make payment of the three installments then due, as he has failed to pay the same. Late Rajnath replied the same on 11th July 1975 requesting for a sympathetic review of the situation and requesting that the matter of payment be kept in abeyance and no coercive steps be taken. Thereafter, on 7th February 1981, Government of India issued another letter calling upon late Rajnath to pay this amount of

Rs.53,07,705/-, with interest @ 10% p.a., aggregating to Rs.95,53,869/-, with an intimation that, if the said amount was not paid within three months, the necessary action would be taken, including the sale of the mortgaged property, under Section 69 of the Transfer of Property Act, 1882.

12. As late Rajnath failed to comply with the said notice, on 24th September 1981, the Government of India and the Syndicate Bank took possession of the suit properties. On 7th January 1984, the 'Agreement' came to be executed between the Government of India and the Syndicate Bank, by which the Syndicate Bank was appointed as an 'agent' to sell the mortgaged property in enforcement of the Government security. A notice for the auction of the property came to be issued on 6th September 1989. At the same time, another notice dated 21st September 1989 was also issued to late Rajnath to make payment of an amount of Rs.53,07,705/- towards principal and Rs.1,30,03,877/-, towards interest accrued upto April, 1987.

13. Late Rajnath challenged the proposed auction of the property by filing Suit No.3373 of 1989, along with the Notice of Motion No.2950 of 1989. The said Notice of Motion came to be dismissed by this Court by holding that, under Section 69 of the Transfer of Property Act, such 'power of sale' of the property was conferred on the Government of India

in terms of the 'Deed of Mortgage'. In pursuance thereof, the Union of India took possession of the suit properties and again by the letter dated 9th March 2001, called upon late Rajnath to make payment of the outstanding amount of Rs.2,04,03,681/-, with interest @ 10% p.a. due thereon, failing which, it was informed that, the mortgaged property would be sold through the Syndicate Bank, which was acting as their 'agent'. By this time, the Syndicate Bank has also filed an application under the provisions of the 'Recovery of the Debts to the Banks and Financial Institutions Act, 1993'. The 'public notice' of the sale was also issued on 5th October 2001.

14. Meanwhile, on 26th July 2003, late Rajnath expired, leaving behind Respondent Nos.1 and 2 herein.

15. In this backdrop, the present Special Civil Suit came to be filed on 13th July 2006 before the Trial Court by the legal heirs of late Rajnath, namely, Respondent Nos.1 and 2, for redemption of the mortgage, for re-conveyance of possession and also for taking of accounts against Government of India and Syndicate Bank.

16. The Appellant-Government of India had resisted the Suit contending *inter alia* that, Respondent Nos.1 and 2 have lost their 'right of redemption', as they have failed to fulfill the legal obligations under

the 'Indenture of Mortgage'. They had failed to repay the mortgage money with interest within the stipulated period and, therefore, the Government of India was constrained to take possession of the mortgaged property. It was submitted that, Respondent Nos.1 and 2 had no iota of right over the mortgaged property, as they had failed to pay the outstanding dues. Moreover, they have lost the alleged right of redemption on account of the lapse of time and hence, the Suit deserved to be dismissed.

17. This Suit came to be resisted by original Defendant No.2-the Syndicate Bank also. However, during pendency of the Suit, one time settlement was arrived at between the Plaintiff and Defendant No.2-Syndicate Bank. As per one time settlement, Defendant No.2-Syndicate Bank agreed to accept the amount of Rs.12,00,00,000/- in full and final settlement of all of its claims towards the mortgage debt and the interest payable by the Plaintiffs to Defendant No.2-Syndicate Bank and in lieu thereof, to release and redeem the mortgage. Accordingly, the Plaintiffs-Respondent Nos.1 and 2 have paid to Defendant No.2-Syndicate Bank the entire amount of outstanding dues. In pursuance thereof, Defendant No.2-Syndicate Bank has executed the 'Deed of Re-conveyance' on 11th January 2011 and transferred and assigned their rights in favour of the Plaintiffs. Defendant No.2-Syndicate Bank has also filed pursis vide 'Exhibit-292' before the Trial Court stating that, its claim is settled and it

is not interested in prosecuting the Suit. As a result, the main contest remained only between Respondent Nos.1 and 2-Plaintiffs and the Appellant-Government of India.

18. In the light of these pleadings, the Trial Court framed necessary issues at 'Exhibit-76'. Two of the important issues were, *'whether the Suit was within limitation?' and 'whether the Plaintiffs have lost their right to 'Decree of Redemption'?'.*

19. In support of their case, Plaintiff No.1 has examined himself and also led the evidence of two more witnesses; whereas, on behalf of Defendant No.1-Union of India, one Mr. S.K. Parida entered into the witness box. Both the parties placed on record the documents viz. Various 'Agreements', 'Indentures of Mortgage', notices exchanged between the parties etc.

20. The Trial Court was, after appreciating entire documentary and oral evidence on record and considering at length and after considering the various case laws relied upon by learned counsel for both the parties, pleased to hold that, *"the Suit is not barred by limitation"*. The Trial Court has arrived at this finding on five-fold grounds and held the Suit within limitation.

21. At the time of arguments before the Trial Court, a specific submission was advanced on behalf of the Government of India that, the 'Deed of Conveyance' (Exhibit-252) clearly shows that it was a transfer for the purpose of the Government Grants Act, i.e. Act No.15 of 1895, and, therefore, as per Section 2 of the said Act, the provisions of Transfer of Property Act, 1882, are not applicable to the said transaction and hence, the Trial Court should construe the said instrument irrespective of the provisions of the Transfer of Property Act, 1882. This submission was challenged by learned Senior Counsel appearing on behalf of Respondent Nos.1 and 2-Plaintiffs and the Trial Court has, after considering the provisions of Section 2 of the Government Grants Act, 1895, held that the provisions of Section 2 of the Government Grants Act, 1895 can be applicable only to the transactions that had taken place under the said Act and not to the other transactions. It was further held by the Trial Court that, the 'Deed of Conveyance' at 'Exhibit-252' is alone executed as per the provisions of the Government Grants Act, 1895; whereas, the 'Mortgage Deeds' at 'Exhibit-253' and 'Exhibit-254' were executed under the provisions of the Transfer of Property Act, 1882, and, therefore, to this transaction, the provisions of the Government Grants Act, 1895, cannot be applicable.

22. The Trial Court has then considered in detail, after referring to the various documents filed on record by the parties and after

construing the terms and conditions of the said documents, as to how the transaction is one of the mortgage and not of conveyance. In this respect, the Trial Court has also considered the averments made in the written statement and as to how by those averments, Appellant-Defendant No.1 has accepted that it was a case of mortgage. Therefore, the Trial Court has, by relying upon the Judgment of the Hon'ble Apex Court in the case of *Sitaram Motiram Kalal Vs. Shantanu Prasad Bhat*, AIR 1960 SC 1697, held that, such admissions in the pleadings are also sufficient to rule out the case of conveyance under the Government Grants Act, 1895.

23. To hold that it is a transaction of mortgage, the Trial Court has appreciated the evidence of the witness examined by the Government of India, namely, Mr. S.K. Parida and held that, there is clear admission of jural relationship of 'Mortgagor' and 'Mortgagee' between the parties and, therefore, it was held that, the Plaintiffs are entitled for redemption of mortgage.

24. The Trial Court has further discussed the evidence in detail as to the grievances of the Plaintiffs in respect of the property being not maintained properly and the loss or damage caused thereto and after taking the cognizance thereof, the Trial Court has thought it fit to directly pass the final decree for redemption, instead of the preliminary

decree for taking of accounts, as required under Order 34 Rule 7(b) of Code of Civil Procedure, 1908. The Trial Court, thus, decreed the Suit holding that, the Plaintiffs are entitled to redemption of the mortgage on re-payment of the amount of Rs.1,48,00,289/-. The Trial Court has also directed Defendant No.1-Union of India to re-convey the mortgaged property in favour of the Plaintiffs-Respondent Nos.1 and 2 herein and to deliver possession thereof. The Plaintiffs were permitted to withdraw the remaining amount out of the total amount of Rs.2,50,07,772/- deposited by the Plaintiffs in the Court.

25. When this Judgment of the Trial Court was challenged before the District Court by the Appellant herein, i.e. Union of India, in First Appeal bearing Regular Civil Appeal No.9 of 2016, the first Appellate Court, by expressing its general agreement with all the findings recorded by the Trial Court, dismissed the Appeal in toto.

26. This Judgment of the first Appellate Court is challenged in the present Second Appeal by learned Additional Solicitor General for the Appellant-Union of India.

27. After hearing learned Additional Solicitor General for the Appellant and learned Senior Counsel for Respondent Nos.1 and 2, this Second Appeal was admitted by this Court [*Coram : S.J. Kathawalla, J.*]

on 15th June 2017 on the following substantial questions of law :-

- (i) *Whether the Suit filed by Respondent Nos.1 and 2 (Original Plaintiffs) was within the prescribed period of limitation ?*
- (ii) *Whether the Government Grants Act, 1895 is applicable only to the 'Deed of Conveyance' dated 21st April 1960 and not to the 'Deed of Mortgage' also dated 21st April 1960 ?*
- (iii) *Whether the 'Mortgage Deed' dated 21st April 1960 could be treated to be a part and parcel of the 'Conveyance Deed' also dated 21st April 1960 ?*
- (iv) *Whether the documents executed between the parties demonstrate that what was executed was a 'Deed of English Mortgage', subject to redemption ?*

28. At the time of final hearing of this Second Appeal, in addition to these four substantial questions of law, which are already framed and on which the present Second Appeal is admitted, one more substantial question of law is raised by learned Additional Solicitor General for the Appellant as to,

'Whether the matter is required to be remitted back to the first Appellate Court, in view of the cryptic and cursory manner in which the Appellate Court has disposed off the First Appeal, without giving any

“reasons” and thus without proper application of mind?’

29. In the words of the learned Additional Solicitor General for the Appellant, the Judgment of the first Appellate Court is *“the mechanical re-production of the Judgment of the Trial Court”*. According to him, the first Appellate Court has not at all bothered to discharge the duty, which is cast upon it, under Order 41 Rule 31 of the Civil Procedure Code, 1908, and, therefore, on this sole ground, the matter needs to be remitted back to the first Appellate Court for its proper application of mind to decide the First Appeal afresh by giving due “reasons”, as, according to learned counsel for the Appellant, the Judgment of the first Appellate Court is conspicuously silent and bereft of any 'reasons', which are the soul of any judicial order.

30. This submission of learned Additional Solicitor General for the Appellant is strongly resisted by learned Senior Counsel for Respondent Nos.1 and 2 by submitting that, no such ground is raised in the Appeal Memo; even at the time of admission of the Second Appeal, this alleged substantial question of law was not raised. Moreover, it is submitted that, as the first Appellate Court has concurred with all the findings of fact and law, as recorded by the Trial Court, it was not necessary for the first Appellate Court to give its reasons in detail. The expression of its general agreement to the reasons recorded by the Trial

Court was sufficient. According to learned Senior Counsel for Respondent Nos.1 and 2, the Judgment of the first Appellate Court cannot also be called as cryptic and cursory and, therefore, this prayer needs to be rejected outrightly.

31. Moreover, it is submitted that, on factual aspects, there is no dispute between the parties. As a matter of fact, the documents executed between the parties are self-speaking to prove that, it is a clear transaction of 'English Mortgage' and even in the written statement also, Appellant has not challenged the nature of the transaction. Nowhere a contention was raised that this 'Indenture of Mortgage' was the part and parcel of the 'Conveyance Deed' and both the documents are required to be read together. For that matter, not a single contention was raised in the written statement that the transaction is governed by the Government Grants Act, 1895, or the Suit is barred by limitation.

32. According to learned Senior Counsel for Respondent Nos.1 and 2-Plaintiffs, therefore, all these points being raised now and all these points are also covered under the settled position of law, including the maintainability of the Suit, as the bar of limitation is not attracted to such Suit, this Court itself can decide all these issues and it is not necessary to remand the matter to the first Appellate Court.

33. According to learned Senior Counsel for Respondent Nos.1 and 2-Plaintiffs, even assuming that the Judgment of the first Appellate Court does not give detailed reasons, only three issues are involved in the present Second Appeal; first issue pertaining to the nature of the transaction, namely, *'whether the 'Mortgage Deed' dated 21st April 1960 can be treated as part and parcel of the 'Conveyance Deed' of the same date?'*, and second issue is, *'whether the provisions of the Government Grants Act, 1895 are applicable only to the 'Deed of Conveyance' and not to the 'Deed of Mortgage' dated 21st April 1960?'* The another relevant issue is, *'whether the Suit filed by Respondent Nos.1 and 2-Original Plaintiffs is within limitation or barred by limitation?'* According to learned Senior Counsel for Respondent Nos.1 and 2, once it is held that the transaction is a 'mortgage', then, as per the well established principle, *"once a mortgage, always a mortgage"* and in view of the five grounds given by the Trial Court, which are based on the sound legal position, it has to be held that, the Suit is within limitation.

34. It is submitted that, in the present case, the 'right to redeem' first accrued on the date the last installment became due i.e. 20th October 1976. The Suit having been filed on 13th July 2006, it is, therefore, within limitation.

35. In the alternate, it is submitted that, as per Section 18 of the Limitation Act, 1963, fresh period of limitation starts to run from the

date of acknowledgment of the mortgage. Here in the case, the Appellant has, from time to time, including in the written statement also, not only acknowledged the mortgage, but also acknowledged that the mortgage can still be redeemed by payment of the amount due. Therefore, the fresh period of limitation has started to run from such acknowledgment and the Trial Court has, on this count also, rightly held that the Suit is within limitation.

36. Moreover, as per Section 19 of the Limitation Act, 1963 also, the fresh period of limitation starts from the acceptance of the payment of consideration. Here in the case, admittedly, such consideration amount was accepted, thereby giving rise to fresh point of limitation.

37. Thus, according to learned Senior Counsel for Respondent Nos.1 and 2, as the finding of the Trial Court is based on sound legal position and the first Appellate Court has recorded its general agreement therewith, it is not necessary to remand the matter back to the first Appellate Court. Secondly, even if the Judgment of the first Appellate Court is found to be lacking on certain aspects, this Court can, in its Judgment, deal with those aspects, as they are not concerned with any disputed facts. According to him, it is, after all, interpretation of the documents and the legal provisions, which this Court can very well undertake.

38. In view of this specific request for remand of the matter to the first Appellate Court made on the ground that the Judgment of the first Appellate Court is a mechanical reproduction of the judicial findings recorded by the Trial Court, without any application of mind, it becomes first necessary to consider the law well settled on this point in the Judgment of the Hon'ble Apex Court in the case of *Santosh Hazari Vs. Purushottam Tiwari (Deceased) by LRs.*, (2001) 3 SCC 179, on which both the parties have placed reliance.

39. However, before advertng to the said Judgment, it can be stated that, the provisions of Order 41 Rule 31 of the Code of Civil Procedure, 1908, are also relevant in this respect, which mandate that the Judgment of the Appellate Court “shall” state (a) the points for determination; (b) the decision thereon; (c) the “reasons” for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the Appellant is entitled.

40. Thus, it is the bounden statutory duty of the first Appellate Court to give the reasons for its decision. As a matter of fact, in my considered opinion, as the “reasons” form the soul of the Judgment, without the reasons, the Judgment cannot be called as a Judgment at all; nor it can be considered to be meeting the requirements of the law. It is impressed by this Court and also by the Hon'ble Supreme Court time and

again that, in the very process of adjudication, the giving of reasons is implicit. The term 'adjudicate' means the decision is given with due reasons therefor, after considering and discussing the submissions made by both the parties.

41. The object of mandating the “giving of reasons” in the Judgment is three fold. Firstly, reading of the reasons given in the Judgment enables both the parties to know why the decision has gone against them or in favour of them. It thus satisfies the test of justice, not only being done but also appears to have been done. It helps to remove any lurking feeling of injustice in the mind of the party, who has lost its case, as he knows that he has lost it for the reasons stated in the Judgment. Secondly, giving of reasons in the Judgment avoids the arbitrary exercise of the powers by the Appellate Court. It helps to remove even the impression that the decision was given in arbitrary manner. It guarantee transparency. Thirdly and equally importantly, the Appellate Court, before which the Judgment is impugned, can also get the opportunity to test the validity of the Judgment impugned, on the basis of the reasons given therein, exactly to judge whether those reasons are based on proper appreciation of evidence and sound legal position.

42. Hence, it is no exaggeration to say that, without the

“reasons”, the Judgment cannot be called as a Judgment at all. It is no “Judgment” in the eyes of the law. Especially, as mandated by Rule 31 of Order 41 of the Code of Civil Procedure, 1908, the first Appellate Court, being the final Court of fact finding and, to that extent, on the question of law also, the Judgment of the first Appellate Court must contain the reasons. That is why it is said that, the First Appeal is a valuable right of the parties, as, unless restricted by law, the whole case therein is open for re-hearing, both, on the questions of fact and law.

43. As observed by the Full Bench of Hon'ble Apex Court in the landmark decision of *Santosh Hazari Vs. Purushottam Tiwari (Deceased) by LRs., (2001) 3 SCC 179*, the Judgment of the Appellate Court must, therefore, reflect its conscious application of mind and record the findings supported by the “reasons” on all the issues arising, along with the contentions put-forth and pressed by the parties for decision of the Appellate Court.

44. This legal position, laid down in the Judgment of *Santosh Hazari Vs. Purushottam Tiwari (Supra)* by the Full Bench of the Hon'ble Apex Court is further re-confirmed by the Apex Court in its several such other decisions, some of which are relied upon by learned Additional Solicitor General for the Appellant, namely, *Madhukar and Ors. Vs. Sangram and Ors., AIR 2001 SC 2171*, and *B. V. Nagesh and Anr. Vs. H. V.*

Sreenivasa Murthy, (2010) 13 SCC 530, wherein also, the Hon'ble Apex Court has re-affirmed with approval the above-said observations of the Hon'ble Apex Court in the case of *Santosh Hazari Vs. Purushottam Tiwari (Supra)* and held that, as the Appellate Court has jurisdiction to reverse or re-affirm the findings of the Trial Court, the First Appeal is a valuable right of the parties and, therefore, the Judgment of the first Appellate Court must reflect its conscious application of mind. It should record the findings supported by the "reasons" on all the issues raised along with the contentions put-forth and pressed by the parties for decision of the Appeal.

45. The same observations are quoted with approval by the Hon'ble Apex Court in the case of *B.V. Nagesh and Anr. Vs. H.V. Sreenivasa Murthy (Supra)*, wherein, after reproducing the provisions of Section 41 Rule 31 of the Code of Civil Procedure, 1908, and the above-said observations of the Hon'ble Apex Court in the case of *Santosh Hazari Vs. Purushottam Tiwari (Supra)* and *Madhukar and Ors. Vs. Sangram and Ors. (Supra)*, it was held that, "*sitting as a Court of Appeal, it is the duty of the first Appellate Court to deal with all the issues and the evidence led by the parties, before recording its findings*".

46. According to learned Senior Counsel for Respondent Nos.1 and 2, these observations of the Hon'ble Apex Court are applicable only

when the first Appellate Court is reversing or setting aside the finding of fact recorded by the Trial Court. Learned Senior Counsel for Respondent Nos.1 and 2 has, in this respect, placed reliance on the further observations of the Hon'ble Apex Court in the case of *Santosh Hazari Vs. Purushottam Tiwari (Supra)*, which are as follows :-

“While reversing a finding of fact, the Appellate Court must come into close quarters with the reasoning assigned by the Trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first Appellate Court had discharged the duty expected of it.”

47. It is submitted by learned Senior Counsel for Respondent Nos.1 and 2 that, when the first Appellate Court is concurring or confirming the findings of the fact and the law, as recorded by the Trial Court, then, as held in this Judgment,

“It is not necessary that the first Appellate Court should re-state the effect of the evidence or reiterate the reasons given by the Trial Court. The expression of general agreement with reasons given by the Court, decision of which is under Appeal, would ordinarily suffice in such case”.

48. In the present case, submission of learned Senior Counsel for Respondent Nos.1 and 2 is that, the first Appellate Court has affirmed

the findings of the Trial Court and also expressed its general agreement with reasons given by the Trial Court. Therefore, it was not necessary to re-state the effect of the evidence or reiterate the reasons given by the Trial Court. It is urged that the two Judgments of the Hon'ble Apex Court; that of *Madhukar and Ors. Vs. Sangram and Ors. (Supra)* and *B.V. Nagesh and Anr. Vs. H.V. Sreenivasa Murthy (Supra)*, on which learned Additional Solicitor General for the Appellant-Union of India has placed reliance, pertain to those cases where the first Appellate Court has reversed the findings of the Trial Court and, therefore, it was held that, the Judgment of the first Appellate Court is not satisfying the requirements of the law and it falls short of considerations, which are expected from the first Appellate Court. Therefore, in those cases, the matter was remanded for fresh consideration to the High Court, which was a first Court of Appeal in those cases. Here in the case, according to learned Senior Counsel for Respondent Nos.1 and 2, as the first Appellate Court has dismissed the First Appeal by confirming the findings of fact and law recorded by the Trial Court, there is no further need of remand or remittance.

49. However, at this stage, in my considered opinion, it would be necessary to take note of the further observations made by the Hon'ble Apex Court in this context in the Judgment of *Santosh Hazari Vs. Purushottam Tiwari (Supra)*, wherein it was clearly held that,

“The First Appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for re-hearing both on questions of fact and law.”

50. Moreover, while observing that the task of an Appellate Court, affirming the findings of the Trial Court, is an easier one and the expression of general agreement with reasons given by the Trial Court, the decision of which is under Appeal, would ordinarily suffice the Hon'ble Apex Court has also struck a note of caution in the following words :-

“We would, however, like to sound a note of caution that the expression of general agreement with the findings recorded in the Judgment under Appeal should not be a device or camouflage adopted by the Appellate Court for shirking the duty cast on it.”

51. Therefore, it is made clear by the Hon'ble Apex Court that, though the expression of general agreement with reasons given by the Court below it would ordinarily suffice, when the first Appellate Court is agreeing with its findings, at the same time, it should not be a device or camouflage adopted by the first Appellate Court for shirking the duty cast on it. The duty cast on the first Appellate Court is to re-appreciate the entire evidence on record, re-consider the legal position, accordingly frame the points for determination and answer them with “reasons”.

52. As the first Appellate Court is the last and final Court of fact

finding and the whole case in the First Appeal is open for re-hearing, both, on the questions of fact and law, First Appeal is, therefore, a valuable right of the parties, which cannot be taken away or frustrated by avoiding giving of reasons for its decision; especially in a case like the present one, where elaborate submissions were advanced on the basis of the case law as to how the reasons given by the Trial Court were not correct. The legality and validity of those reasons was, therefore, required to be considered and tested by the first Appellate Court in the light of the submissions advanced before it.

53. It needs to be remembered that, the scope of the Second Appeal being a very limited one, as explained in the Judgment of *Santosh Hazari Vs. Purushottam Tiwari (Supra)* itself, in the Second Appeal, this Court cannot enter into the factual aspects or even the questions of law, unless they are “substantial” questions of law. What is “substantial question of law” is explained by the Hon'ble Apex Court in this Judgment, in paragraph No.12, as follows :-

12. “The phrase “substantial question of law”, as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying “question of law”, means - of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with - technical, of no substance or consequence, or academic

merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance”, as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law, on which a Second Appeal shall be heard, need not necessarily be a substantial question of law of general importance. In *Guran Ditta Vs. T. Ram Ditta*, AIR 1928 PC 172, the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that, it did not mean a substantial question of general importance but a substantial question of law, which was involved in the case as between the parties. In *Sir Chunilal V. Mehta & Sons Ltd. Vs. Century Spg. And Mfg. Co. Ltd.*, AIR 1962 SC 1314, the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao Vs. Noony Veeraju*, AIR 1951 Mad 969.

“When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then, the question would be a substantial question of law. On the other hand, if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those

principles to the particular facts of the case, it would not be a substantial question of law.”

[Emphasis Supplied]

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial :

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question of law.”

54. In paragraph No.14 of the aforesaid Judgment, it was further held that,

14. *“A point of law, which admits of no two opinions, may be a proposition of law, but cannot be a substantial question of law. To be “substantial”, a question of law must be debatable, not previously settled by law of the land or a binding precedent.*

and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case”, there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by the Court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case, unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.” [Emphasis Supplied]

55. The point, therefore, to be stressed is that, the scope of the Second Appeal, in view of the amendment to Section 100 of the Code of Civil Procedure, 1908, is considerably circumscribed. Only if it raises the “substantial question of law”, as defined above, the High Court can entertain the Second Appeal; otherwise Second Appeal cannot be even admitted even if it raises a mere question of law. Therefore, it is for the first Appellate Court alone to consider even the questions of law, which are involved in the particular facts of that case. As the entire factual

scenario of the case with the findings and reasons therefor of the Trial Court is open for re-agitation in the First Appeal, it is as good as re-hearing of the case before the first Appellate Court, both, on the questions of facts and also of law. Therefore, much importance is laid on the duty cast on the first Court of Appeal, expecting its Judgment to be reflecting its conscious application of mind, which necessarily contemplates its recording findings, supported by the reasons on all the issues arising in the context of the contentions put-forth and pressed by the parties. That is also the reason why the Hon'ble Apex Court has emphasized that the first Appellate Court should not shirk from its duty by expressing general agreement with the findings recorded by the Trial Court.

56. As held by the Apex Court in the case of *Santosh Hazari Vs. Purushottam Tiwari (Supra)*, the first Appellate Court continues, as before, to be a final Court of facts and law. Pure finding of facts remain immune from challenge before the High Court in the Second Appeal. Now the first Appellate Court is also a final Court of law in the sense that its decision on a question of law, even if erroneous, may not be vulnerable before the High Court in the Second Appeal; because, the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first Appellate Court even on the questions of law, unless such questions of law is a substantial one.

57. This dictum of law is applicable to all the Judgments in the First Appeals; whether by the said Judgment, the first Appellate Court is reversing the Judgment of the Trial Court, or, otherwise, concurring with it. First Appellate Court being the final Court of facts and law, even while dismissing the First Appeal, it has to discharge the duty cast upon it by law and cannot shirk from its duty of recording its reasons under the camouflage of expressing its general agreement with the reasons recorded in the Judgment of the Trial Court.

58. Here in the case, it may be true that, the first Appellate Court has dismissed the First Appeal and thereby concurred with the findings of facts and law, as arrived at by the Trial Court, but while doing so, the duty on the first Appellate Court was to give its own reasoning on the questions of law raised in the present case in the backdrop of the facts, because, the findings of the Appellate Court with its reasons are bound to be final on, both, the question of law and fact. Particularly in the present case, there are several questions of law and facts involved, having regard to the chronology and sequence of events spanning over 50 years and in the light of the various documents, which came to be executed between the parties from time to time. A specific question of law was raised in the backdrop of the facts of this case as to *'whether the 'Mortgage Deed' dated 21st April 1960 could be treated to be a part and parcel of the Conveyance Deed of the same date?'* An intriguing question of law was

also posed as to *'whether the Government Grants Act, 1895, which is finding mention in the 'Deed of Conveyance', was applicable only to that document or also to the 'Mortgage Deed'?*' It was also necessary to be decided *'whether the document executed as a 'Deed of English Mortgage' was subject to redemption and, if yes, whether the Suit filed was within the prescribed period of limitation?'* All these contentions were raised before the Trial Court and also before the Appellate Court.

59. In the Appeal Memo, it was specifically contended that, the Trial Court has not applied its mind while considering the respective status of the Plaintiffs and Defendants and has wrongly upheld the jural relationship between the parties as 'Mortgagor' and 'Mortgagee', though, in fact, the transaction between the parties was of sale with condition to re-purchase the suit property, on failure of the payment of the consideration amount within the stipulated period. It was also contended that the Trial Court has erred in accepting the theory of 'English Mortgage', as put-forth by the Plaintiffs and further erred in applying the provisions of the Transfer of Property Act, 1882, which were not applicable to such transaction, as it was governed by the Government Grants Act, 1895 and the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It was also urged that, the Trial Court has committed an error in holding that the Appellant had, in its written statement, admitted subsistence of the mortgage and jural relationship.

60. Most importantly, the issue of Suit being barred by limitation was canvassed and the Trial Court has given not less than five grounds for holding that the Suit was within limitation. All these findings of fact and the law, as recorded by the Trial Court, were challenged before the first Appellate Court by relying upon the Judgment of the Apex Court for canvassing that the 'right of redemption' stood extinguished on 20th October 1972 itself, on failure of the Plaintiffs to make payment of the first installment and, subsequently, because of taking of possession of the suit property on 24th September 1981 by the Appellant-Union of India, free from all encumbrances. Therefore, it was pointed out that, the Plaintiffs 'right to redeem' the mortgage has been extinguished. The contention advanced by the Plaintiffs that, on account of the acknowledgment of the jural relationship between the parties in the earlier notices of auction and other documents executed subsequently, the said period has been extended, was accepted by the Trial Court and the said finding was subject to challenge in the first Appellate Court. Even as regards the aspect of extension of time on account of acceptance of the amount subsequently, was also challenged before the first Appellate Court.

61. Even a cursory perusal to the Judgment of the first Appellate Court is also sufficient to show that, elaborate arguments were advanced before the first Appellate Court on all these aspects by placing reliance

on various Judgments of the Hon'ble Apex Court in this respect. The first Appellate Court itself has, in paragraph No.13 of its Judgment, observed that,

“The provisions of Government Grants Act, 1895, are also having some relevance as to the suit transaction, as the suit property came to be transferred in favour of Respondents-Plaintiffs by the Appellant-Government of India under the Scheme of Government Grants Act, 1895. Therefore, not only the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which are having nexus with the alleged transaction along with the corresponding Rules of 1995, but the provisions of the Government Grants Act, 1895, also cannot be overlooked.”

62. It was also held by the first Appellate Court that,

“The provisions of the Transfer of Property Act, 1882, are also required to be considered. In the light of the conflicting and overriding effect of the provisions of these Statutes, they are liable to be construed with its real meaning in proper perspective.”

63. It was further observed that,

“The relevant provisions of Article 61 of the Limitation Act, 1963 are also liable to be considered while deciding the aspect of locus-standi and tenability of the claim.”

64. A specific observation was made that,

“Keeping all these provisions of the relevant Statutes

in mind, the factual aspects of the dispute are liable to be scrutinized in legal parlance.”

65. It is pertinent to note that, despite making all these observations, the first Appellate Court has, except for citing in detail the submissions advanced before it by learned Senior Counsel for both the parties in paragraph Nos.14 to 21 of its Judgment, had not given any of its own reasons as to why it is concurring with the findings of fact and law, as given by the Trial Court, and why dismissing the challenges raised to those findings. After devoting seven paras of its Judgment to the elaborate rival submissions advanced before it challenging and supporting the Judgment of the Trial Court, the first Appellate Court has, without even cursorily touching to any of those submissions or without even considering whether the case laws cited before it were applicable to the facts or needs to be distinguished with, in just one paragraph No.22, concluded its Judgment by observing that,

“On going through the factual aspects by way of admissions and ratio laid down in the relied case laws, it is seen that the assertion of right to sell or right to recover the amount under the mortgage, amounting to admitting the right of redemption available to the ‘Mortgagor’ and as the Appellant-Defendant No.1 cannot travel beyond the pleading, in which it admits jural relationship, there was no merit in the arguments advanced on behalf of the Appellant to deny the inter se relations between the parties.”

66. The first Appellate Court has thus concluded by stating that,

“Considering all these facts and evidence on record and the interpretation of the corresponding provision construed by the Trial Court, it appeals to my mind that Respondents-Plaintiffs have succeeded in proving their relation as a 'Mortgagor' with the Appellant-Defendant No.1 as 'Mortgagee'”.

67. However, there is absolutely not a single line as to how these various Judgments cited by both the parties to advance their case are applicable or can be distinguished. There is also no discussion as to the evidence or even to the facts. Though the first Appellate Court has itself, in its opening paragraph of the “reasons”, stated that the provisions of various Statutes, like Government Grants Act, 1895, Transfer of Property Act, 1882 and Displaced Persons (Compensation and Rehabilitation) Act, 1954, are all relevant and required to be considered, having regard to their conflicting and overriding provisions, none of the provisions of any of these three Acts is discussed in the light of the case law cited before it. Only an expression of general agreement is there, without giving its own reasons or the discussion on the findings on facts and law arrived at by the Trial Court.

68. Even as regards the issue of limitation, after quoting the arguments advanced before it, which were based on the Judgments of the Hon'ble Apex Court and several High Courts in nine paragraphs, from paragraph Nos.20 to 29 of its Judgment, in only one paragraph i.e.

paragraph No.30 of its Judgment, the first Appellate Court has again wound up by stating that, *“considering all these aspects and the corresponding legal propositions applicable to the suit transaction, I am of the considered opinion that Respondents-Plaintiffs have proved the jural relation between the parties as 'Mortgagor' and 'Mortgagee' and subsistence of mortgage till filing of the Suit. On the contrary, the Appellant-Defendant No.1 has failed to prove that, the right of redemption is extinguished by acquisition of mortgaged property on 24th September 1981 free from all encumbrances. The technical objection on the point of limitation is also not sustainable, in view of Section 60 of the Transfer of Property Act, 1882 and Section 61 of the Limitation Act, 1963.”*

69. However, there is absolutely no discussion about either Section 60 of the Transfer of Property Act, 1882, or Section 61 of the Limitation Act, 1963. There is also no discussion as to why the period of limitation is not commencing from first default in payment and how it is extended. The entire Judgment is conspicuously silent on this aspect.

70. What is more surprising to note is that the Trial Court has also considered other issues raised in the Suit, in respect of which also the 'Decree' was sought, namely, taking of accounts from mortgagee in possession and adjusting the same against the mortgage money. The Trial Court has in this respect considered the provisions of Section 34

Rule 7 of Code of Civil Procedure, 1908, which, undoubtedly, contemplates passing of a preliminary decree in the Suit for redemption in the first instance. The Trial Court has, however, given elaborate reasons, in paragraph Nos.66 to 68 of its Judgment, as to why instead of passing the preliminary decree, it was proceeding to pass the final decree. The said order of the Trial Court was also challenged in the Appeal Memo. Despite that, the Judgment of the first Appellate Court is silent on this aspect also. There is not a single line of discussion as to whether the drawing of preliminary decree was essential or the final decree, as ordered by the Trial Court, was justified. Without any such discussion or even touching thereto, the first Appellate Court has directly dismissed the First Appeal.

71. Thus, there is much substance in the submission advanced by learned Additional Solicitor General for the Appellant that, under the camouflage of expressing the general agreement with the reasons given by the Trial Court, the Appellate Court has shirked from its statutory duty and has not at all applied its own mind; especially when there were several such questions of law raised, which were required to be considered in the backdrop of those facts. Sitting as a first Appellate Court, it was its duty to deal with all the issues and the evidence led by the parties, before recording its finding. Here in the case, it is crystal clear that, the first Appellate Court has failed to discharge the statutory obligation placed on it. The Judgment of the First Appeal is devoid of

reasons, as except for quoting the arguments advanced before it, there is no discussion as to why it is accepting the finding of the Trial Court and not the submissions advanced by learned counsel for the Appellant therein, challenging those findings. None of the relevant case law has been considered or discussed. Therefore, it is clear that the First Appeal has been decided in a very unsatisfactory manner. Sans any reasons given for even the general agreement with the Judgment of the Trial Court, such Judgment of the first Appellate Court cannot be called as 'Judgment' at all. It does not reflect its conscious application of mind and also does not record finding supported with reasons on all the issues arising before it. Such Judgment of the first Appellate Court being not a 'Judgment' in real sense, this valuable right of the First Appeal, which the Appellant-Defendant No.1 statutorily enjoyed, is as good as denied to them, as their contentions on facts and law were not at all considered by the first Appellate Court. Hence, such 'Judgment' cannot be sustainable in law.

72. As regards the submission of learned Senior Counsel for Respondent Nos.1 and 2 that, even if the first Appellate Court has not considered or discussed in detail the reasons, as the first Appellate Court was confirming the Judgment of the Trial Court, there is no necessity of remanding the matter, as, according to him, all the issues raised are pertaining to the questions of law; hence, this Court can itself decide those questions, instead of sending the matter to the District Court, in

my considered opinion, this submission also cannot be accepted, because, then it would be tantamount to denying the Appellant their valuable right of their case being tested on the anvil of facts and law by the first Appellate Court. Secondly, the scope of the Second Appeal, as stated above, is limited. The questions raised in this Second Appeal can, as on today, at the most, be called “the questions of law”, but they cannot be called as “substantial questions of law”, as they pertain to the interpretation of the documents and also pertain to construing the intention of the parties in executing these documents. Therefore, these questions of law are having foundation in the evidence and pleadings, which the first Appellate Court alone could have considered, being the last fact finding Court and where the parties are having right to re-open the entire case. In the Second Appeal, this Court cannot now re-open the case and re-appreciate the evidence to know the intention of the parties for the purpose of interpreting these documents.

73. As held by the Apex Court in the case of *Santosh Hazari Vs. Purushottam Tiwari (Supra)*, the jurisdiction of the Second Appeal is now ceased to be available to correct the errors of law or erroneous findings of the first Appellate Court, even on the question of law, unless such question of law is a substantial one. Therefore, unless there is a finding on question of law, also arrived at by the first Appellate Court, this Court cannot decide whether this Second Appeal involves substantial question of law or not. Whatever substantial questions of law,

which are framed by this Court at the time of admission of the Second Appeal, they are all having roots in the pleadings and evidence of the parties, as they pertain to the interpretation of the documents; whether 'Mortgage Deed' can be considered as part and parcel of the 'Conveyance Deed'?; whether the documents executed between the parties demonstrate that what was executed was a 'Deed of English Mortgage', subject to redemption? Most importantly, even the issue of limitation being also a mixed issue of facts and law, as regards these issues or the questions, there has to be the Judgment of the first Appellate Court concluding the findings thereon supported with reasons therefor. Then only, this Court in the Second Appeal will not allow itself to become a “third Court of fact finding” and can entertain purely the substantial question of law.

74. Here the Appellate Court has not given its own reasons. There is also no independent appreciation of evidence in its Judgment. There is no finding supported with reasons as to whether the 'Mortgage Deed' could be treated as part and parcel of the 'Conveyance Deed' and whether the document executed was a 'Deed of English Mortgage'. There is also no reasoning as to whether the Government Grants Act, 1895, can be made applicable only to the 'Deed of Conveyance' and not to the 'Deed of Mortgage'. There is also no reasoning as to which provisions, whether of Government Grants Act, 1895, or Transfer of Property Act, 1882, will prevail.

75. In the absence of all the reasons, which have roots in the facts and appreciation of evidence as also interpretation of documents, if the First Appeal is disposed off, then, as the Appellants have lost their valuable right to test the submissions advanced by them to challenge the findings, as recorded by the Trial Court, and to have the independent opinion i.e. the reasons of the first Appellate Court, then, in the Second Appeal, this Court cannot brush aside all those submissions saying that, they do not involve substantial questions of law. This Court also cannot convert itself to the 'first Court of Appeal'.

76. Therefore, once it is found that the Judgment of the first Appellate Court is not satisfactory and it has not discharged the duty cast upon it by law and it has adopted a device or camouflage for shirking that duty, by expressing a general agreement with the findings recorded by the Trial Court, then, there is no other option, but to remit the matter back to the first Appellate Court for hearing and deciding the First Appeal afresh.

77. At this stage, submission of learned Additional Solicitor General for the Appellant is that, in the Appeal Memo, this contention is not raised that the Judgment of the first Appellate Court is mechanical reproduction of the judicial findings of the Trial Court and, therefore, matter needs to be remitted back. It is urged that, no such substantial question of law is raised either in the Appeal Memo or even at the time of

admission of the present Second Appeal and, therefore, the matter cannot be remanded back on the basis of the arguments now advanced.

78. In this respect, it has to be stated that, it is entirely for this Court to decide, after going through the Judgment of the first Appellate Court, whether Appeal deserves to be allowed, dismissed or, at times, whether it needs to be remitted for deciding afresh. Hence, even in the absence of such prayer for remand also, if this Court finds that the Judgment of the first Appellate Court is not satisfactory and it is depriving the Appellant of their valuable right of First Appeal, then this Court can remit the matter, on its own also. Hence, merely because in the Appeal Memo, such prayer is not made, this Court cannot be denuded of that power.

79. Secondly, even in the absence of such substantial question of law being framed at the time of admission of Second Appeal, power of this Court to hear and decide the Second Appeal on any other substantial question of law is not taken away. As held by the Hon'ble Apex Court in the case of *Santosh Hazari Vs. Purushottam Tiwari (Supra)*, in paragraph No.10 of its Judgment, that,

10. *"..... At the hearing of the Appeal, though the scope of hearing is circumscribed by the question so formulated by the High Court, at the time of admission of the Appeal, the Respondent is at liberty to show that the question formulated by the High Court was not involved in*

the case. In spite of a substantial question of law determining the scope of hearing of Second Appeal having been formulated by the High Court, its power to hear the Appeal on any other substantial question of law, not earlier formulated by it, is not taken away, subject to the twin conditions being satisfied; (i) the High Court feels satisfied that the case involves such question; and (ii) the High Court records reasons for its such satisfaction.”

[Emphasis Supplied]

80. Here in the case, on perusal of the Judgment of the first Appellate Court, this Court is more than convinced that this case involves the substantial question of law as to *'whether the Appeal should be remitted for fresh hearing?'* Both the parties were heard elaborately on this question and after being satisfied with the reasons stated above, this Court finds it necessary to remit the Appeal for fresh hearing.

81. The Second Appeal is, therefore, allowed. The impugned 'Judgment and Decree' passed by the first Appellate Court is set aside. The case is remitted back to the first Appellate Court for hearing and deciding the First Appeal afresh, in accordance with law.

82. It is made clear that, this Court has not expressed any opinion either way on any of the issues arising for decision in this case. It is also made clear that, the First Appeal should be heard not only on the questions, which this Court has framed, but also on all the questions of

law and facts, as contemplated in the scope of the First Appeal, and it should be decided uninfluenced by any of the observations made here-in-above, which have been made solely to support the finding of this Court that the Judgment of the first Appellate Court is not satisfactory, as it does not contain the reasons and, therefore, while deciding the First Appeal, the first Appellate Court should bear in mind the legal position, as discussed above in respect of recording its reasons for its Judgment.

83. The first Appellate Court should decide this Appeal within the time-frame of six months from the date of receipt of the 'Record and Proceedings' of this case.

84. Registry to send the 'Record and Proceedings' forthwith.

[DR. SHALINI PHANSALKAR-JOSHI, J.]