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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.150 OF 2018
WITH
CIVIL APPLICATION NO.345 OF 2018

Raghuvir H.Pednekar	...Appellant
V/s.	
Giridhar H. Pendnekar & Anr.	...Respondents

Mr.Prakash D. Gharge for the Appellant.

Mr.Surel S. Shah with Mr.Rishi Soni and Ms.Neha Sonawane i/b VIS
Legis Law Practice for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 20TH AUGUST, 2019.

P.C. :-

1. By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original plaintiff) impugns the judgment and decree dated 31st March, 2017 passed by the Principal District Judge dismissing the appeal filed by the appellant and confirming the decree passed by the learned trial Judge dated 15th February, 2013 allowing the counter claim filed by the defendant.

2. A perusal of the record indicates that a separate suit filed by the appellant (original plaintiff) bearing Civil Suit No.65 of 2004 came to be dismissed for default on 1st March, 2008. Learned trial Judge thereafter proceeded with the counter claim filed by the defendant. The witness of the defendant was cross-examined by the

learned advocate appearing for the appellant before the trial Court insofar as the counter claim is concerned. A perusal of the record further indicates that the appellant applied for several adjournments before the trial Court in the said counter claim for seeking liberty to lead evidence however, did not lead any evidence before the learned trial Judge in the said counter claim. Though the appellant filed an application for restoration of Suit No.65 of 2004 which was dismissed on 1st March, 2008 and though the said application for restoration was filed on 13th February, 2014 i.e. after the decree in favour of the defendant came to be passed by the learned trial Court in the counter claim, the appellant did not pursue the said application till date.

3. It is the case of the defendant that since the plaintiff has not described the suit property properly, the defendant was required to file the said counter claim for various reliefs.

4. Though the appellant was granted various opportunities to defend the counter claim filed by the defendant, the appellant failed to appear before the learned trial Court after some time and did not lead any evidence. In these circumstances, learned trial Judge after considering the pleadings and evidence available on record, passed a decree in favour of the defendant insofar as the counter claim is concerned. Learned Appellate Court also considered the evidence on record and rightly dismissed the appeal preferred by the appellant.

5. Mr.Shah, learned counsel for the original defendant invited my attention to the proceedings in Regular Civil Suit No.73 of 2004 filed by the appellant *inter-alia* praying for a declaration that the defendant was the owner of properties described at serial nos.16 and 17 in the counter claim filed by the defendant. The said suit is also dismissed for default. The appellant has not applied for restoration of the suit dismissed by the learned trial Court dismissing Regular Civil Suit No.73 of 2004 which had direct bearing on those two properties forming part of the counter claim filed by the defendant.

6. The findings rendered by the two Courts below being not perverse, no case is made out for intervention with the judgment and decree passed by the two Courts below. No substantial question of law arises in this second appeal. The second appeal is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

7. In view of dismissal of the second appeal, Civil Application No.345 of 2018 does not survive and is accordingly dismissed.

(R.D. DHANUKA, J.)