

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

**SECOND APPEAL NO.426 OF 2016
WITH
CIVIL APPLICATION NO. 448 OF 2015**

Shivaji Anna Wadkar Appellant

Vs.

1. Kashinath Shankar Bhingare
2. Bapu Govind Jadhav Respondents

Mr. Mohan N. Devkule i/by Mr. Rakesh Bhatkar for Appellant
Mr. S.M. Railkar for Respondent nos. 1 and 2.

**Coram : NITIN W. SAMBRE, J.
Date : 5th February, 2020**

P.C.:

1. The appellant-original defendant in first appellate jurisdiction suffered a decree for recovery of amount though the claim was dismissed by the trial Court. As such, this Second Appeal.

2. While inviting attention of this Court, learned counsel for the appellant-original defendant would urge that the transaction between the parties was symbolic one, as such same was never to be

acted upon. Learned counsel for the appellant would urge that so as to prove the same, the evidence of the independent witnesses, who were examined is not taken into account and that being so, the order of the appellate Court warrants interference. So as to substantiate his claim, he would draw support of the scheme of Section 7 and Order 41 of Code of Civil Procedure.

3. Learned counsel for the respondent-original plaintiff would support the judgment impugned. According to him, even if the appellate Court has not dealt with the evidence of two independent witnesses examined by the defendant, a case of the plaintiff as was put-forth in the form of monetary claim was rightly held to be proved. He submits that the judgment impugned is in the form of money decree, this Court even if intend to interfere shall put the appellant to certain conditions. He sought dismissal.

4. Considered rival submissions.

5. As the present appellant has come out with a case that the transaction, which is formed to be basis for establishing the claim for

monetary decree was symbolic one, onus was shifted on it, hence examined two independent witnesses in addition to the appellant to discharge the same.

6. Perused the judgment of the lower appellate Court, wherein a money decree is passed, depicts that the evidence of two independent witnesses of the present appellant is at all not been touched by the appellate Court.

7. The appellate Court has every power to reverse or modify the findings recorded by the trial Court unless there is a statutory embargo to that effect. The appellate Court is required to re-hear and re-appreciate the entire factual matrix and evidence brought on record and while reversing the findings of Court below, application of mind must be reflected in the judgment, so as to justify the view expressed in appellate jurisdiction.

8. In support of the aforesaid background, a reliance can be placed on the judgment of the Apex Court in the case of Santosh Hazari Vs. Purushottam Tiwari, reported in (2001) A.I.R. (SC), 965.

9. In the aforesaid background, following question of law is required to be answered in favour of the appellant viz :

“Whether the appellate Court has committed an error in reversing the finding of the trial Court without analysing the evidence of the witnesses of the appellant-defendant?

10. In the aforesaid background, view of the appellate Court, in my opinion is not sustainable and liable to be quashed and set aside and accordingly is quashed and set aside.

11. Since the suit claim initiated by the respondent-plaintiff is pending since 2005, it will be appropriate in my opinion to pass following order :

ORDER

(i) The parties to the appeal shall appear before the District Judge, Ratnagiri on 2nd March, 2020 and shall submit their written notes of argument before the appellate Court.

(ii) The appellate Court shall make every endeavour to decide the appeal within three months from 2nd March, 2020.

(iii) Parties were agreed that they will co-operate with the appellate Court in expeditious disposal of the appeal.

(iv) As the parties have agreed to appear before the lower appellate Court on 2nd March, 2020, a fresh notices to be issued by the first appellate Court are dispensed with.

(v) Appeal is partly allowed and disposed of in above terms.

(vi) In view of disposal of Second Appeal, Civil Application No. 448 of 2015 does not survive, the same is accordingly disposed of.

(NITIN W. SAMBRE, J.)