

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

**909 SECOND APPEAL NO.565 OF 2021
WITH
CA/12421/2021 IN SA/565/2021**

LAXMAN RAMRAO NAGARGOJE & ORS./
VERSUS
SURESH PREMRAJ MUTHA

...

Advocate for Appellant : Mr. R. F. Totala A;
Mr. P.F. Patni, Adv. For Respondent sole Caveator

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 30th November, 2021

PER COURT :-

1. Present appeal has been filed by original defendants, challenging the judgment and decree passed by both the Courts below. Present respondent is original plaintiff, who had filed Special Civil Suit No.290/2001 before Joint Civil Judge, Senior Division, Aurangabad for specific performance of contract and perpetual injunction. The said suit came to be decreed on 4.4.2007. The plaintiff was directed to deposit amount of Rs.2,40,000/- within a period of one month towards consideration of the plot and on depositing the said amount by the plaintiff, the defendants should execute sale-deed in respect of the suit property in favour of the plaintiff. Other consequential order was also passed.

(2)

2. Present appellants – original defendants challenged the said judgment and decree by filing RCA No. 243/2012 and the said appeal has been dismissed by learned District Judge-3, Aurangabad on 12.3.2021. Hence, this Second Appeal.

3. Heard learned Advocate appearing for the respective parties.

4. Without going into merits of the case, it can be seen from the judgment of the first Appellate Court that there is blatant non-adherence to the provisions of Order 41 Rule 31 of CPC. Only one point was framed for determination, viz. "Whether judgment and order passed by the learned Trial Court is legal, valid and legally sustainable ?" and in only one paragraph, the reasons are given. There is absolutely no re-appreciation of evidence that was adduced by both the courts below.

5. In **H. Siddiqui (Dead by L.rs.) Vs. A. Ramlingam – 2011 4 SCC 240** it has been laid down in respect of Order 41 Rule 31 of CPC that, "this provisions should be read in such a way as to require that the various

(3)

particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions."

6. Further, the Division Bench of this Court in the case of **Khatun bee wd/o Mohammed Sayeed and Ors. Vs. Aminabai w/o Mohammad Sabir - 2006 (6) Mah.L.J. 759**, had reiterated that compliance of Rule 31 of Order 41 of CPC is mandatory and non-adherence to the same warrants setting aside of judgment and remanding the matter to the first Appellate Court to consider the appeal afresh in accordance with provisions of law. In view of this legal position, this Court has no option but to set aside the judgment and decree passed by learned District Judge-3, Aurangabad on 12.3.2021 and remand the matter for its consideration afresh.

7. It will not be out of place to mention here that, after the judgment and decree was passed by the learned Trial Judge, the present appellants had filed the First Appeal before this Court and thereafter it can be seen that after pecuniary jurisdiction of the District Courts was increased, the said appeal was transferred. When the First Appeal was before this Court, on the application for stay, an order was passed on 17.4.2008. Learned Advocate for the appellants submits that the execution proceeding is pending and would be taken up in the near future and under such circumstance,

(5)

while remanding the matter, stay has to be granted to the further proceedings before the Executing Court and same conditions, as this Court had earlier imposed, are required to be imposed.

8. With these observations, following order is passed,

ORDER

i. The Second Appeal stands partly allowed;

ii. The judgment and decree passed in RCA No.243/2012 by learned District Judge-3, Aurangabad, on 12.3.2021, stands set aside;

iii. The Regular Civil Appeal No. 243/2012 is restored to the file of Principal District Judge, Aurangabad.

iv. Both the parties to appear before the learned Principal District Judge, Aurangabad on 20th December, 2021.

v. In view of the fact that old matter would be restored, learned Principal District Judge, Aurangabad to expedite hearing of the appeal and decide the same as early as possible and preferably within a period of eight months

(6)

from the date of appearance of the parties before him.

vi. CA No.12421/2021 moved for stay stands allowed and disposed of in terms of prayer clause (B). However, a condition is imposed that the appellants/applicants will not create any third party interest in respect of the suit property and will not part with the possession of the suit property in favour of any third party. Further, in the event the applicants commit any breach of this condition, it would be open to the respondent-plaintiff to make an application to the first Appellate Court itself for vacating the stay.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV