

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 34 OF 2009

Shri Gurudas K. Shirodkar (since deceased)

1a. Smt. Praful alias Baby Gurudas Shirodkar
widow of late Gurudas Shirodkar
Aged 63 years, widow

1b. Shri Navin Gurudas Shirodkar
son of late Gurudas Shirodkar
Aged 30 years, service, married
And his wife

1c. Smt. Siddhi Naik
Alias Siddhi Shirodkar
Aged 24 years, married, service
All above residents of House No.450-A
Ward Layamati, Village Davorlim,
Salcete Goa – 403 707

1d.Smt. Monali Gurudas Shirodkar
Alias Monali Naik
Daughter of late Gurudas Shirodkar
aged 34 years, married, service
and her husband

1e.Shri Damodar Prakash Naik
son of Prakash Naik
Aged 37 years, married, service
Both above residents of House No.186,
Per Seraulim, Soccobhat,
Salcete Goa.

... Appellants.

Versus

Shri Chandrakant Shirodkar
Major, married, business,
Resident of H.No.450-A, Davorlim
Navelim, Salcete Goa.

... Respondent.

Mr. S.S. Kakodkar, Advocate for the appellants.

Mr. C.A. Coutinho, Advocate for respondent.

Coram: BHARATI H. DANGRE, J.

Date: 11th March 2021

ORAL JUDGMENT:

By the present appeal the Appellants (heirs of original Defendant) assail the concurrent finding rendered by the two Courts below in favour of the Plaintiff (Defendant herein). For the sake of convenience the parties are referred to by their status in the original proceedings; as Plaintiff and Defendant.

2. The Plaintiff and the Defendant are real brother and the property involved in litigation is house bearing No.450A situated at Davorlim described in Land Registration Office No.121 of pages 140 to 153 and enrolled with Land Registration Officer under No.51.

3. The Plaintiff initially filed a suit, seeking judgment and decree restraining the Defendants permanently from interfering in the

suit house No.450A. The said relief was claimed by pleading that the Plaintiff had purchased plot 'A' of the property known as "Santgalichem Mola" situated at Davorlim Village Panchayat Davorlim and enrolled for matrix under No.51. On purchase of the said plot, the residential house was construed by the Plaintiff which came to be registered as house No.450 for tax purpose. It is pleaded that the Plaintiff is paying house tax to the Panchayat for the said house. It is averred that when the house was constructed the Defendant was working at a distant place and as there was no place for him to stay, the Plaintiff accommodated him. The Plaintiff's sister also came to stay in the said house and since there was extension of the family, he constructed another house in the year 1983, by the side of the old house which came to be registered in the Panchayat office as 450A. The Plaintiff is also paying house tax in respect of the new house. The new house of the Plaintiff comprised of one entrance, two rooms and one kitchen and the total plinth area is 45sq.mts but on account of the enhanced number of members in the family, it was found to be insufficient. The Defendant picked up a quarrel with the Plaintiff on account of his share in the property and he received a notice through an Advocate on behalf of the Defendant claiming joint ownership. Since the Defendant challenged the Plaintiff that he would forcibly enter into the new house and made some attempts to realise the said threat, the Plaintiff instituted the suit based on the cause of action dated 01.02.1985 when the Defendants made an attempt to encroach into the said property. During the pendency of the suit the Defendants managed to gain entry into the house No.450A and thereafter by amending the prayer clause, the Plaintiff sought declaration as owner of the suit house and also

claimed possession of the said portion of the house which was occupied by the Defendant.

4. The Defendants opposed the plaint by filing a written statement and averred that the plot of land referred to in the plaint was originally purchased by the sister of the Defendants, however, the sale deed was executed in name of the brother as sister's husband accepted the Plaintiff as head of the family. He relied on a family settlement, in form of an unregistered documents duly executed under which the Plaintiff divided the property into plot No.A1 and A2 and allotted plot No.A1 to the Defendant's sister, thereby the old house and part of the plot has been transferred to the use and benefit of the sister and brother-in-law. The Defendant pleaded that he had consented to the transfer as the plot was purchased and the house was built out of the money of Defendant's sister. The Defendant averred that all transactions were made in the name of the Plaintiff as he was head of the family and even the family property and another house at Shiroda are in the name of the Plaintiff. The Defendant also claimed that he contributed towards construction of the said house by withdrawing an amount from his account and by selling a portion of his property which earned him an amount of ₹23,000/-. The Defendant pleaded that he is in lawful, peaceful possession of house No.450A and he alongwith his mother are joint owners in occupation of the same.

5. By judgment dated 29.03.2001, the suit filed by the Plaintiff was partly decreed, declaring the Plaintiff as owner of the suit house and the Defendant was directed to vacate the portion of the suit house occupied by him and hand over the vacant possession to the Plaintiff. The Trial Court framed 12 issues; issue no. 1 to 5 to be proved by the Plaintiff and issue no. 6 to 12 being proved by the Defendant. By answering issue no. 1 to 5 in the affirmative and 6 to 12 in the negative on the basis of the evidence adduced before it by the witnesses and the documents placed on record all the issues framed were answered. Recording that the vendor of the Plaintiff who had sold to the Plaintiff had clearly deposed that he had received the entire amount from the Plaintiff himself and in absence of evidence on record to substantiate the claim of the Defendant to the suit house, that the documents produced by the Plaintiff at Exhibit PW1/A coupled with the admission of the Defendant that the plot stand in the name of the Plaintiff, the issue no. 1 whether the Plaintiff proves that he has purchased the plot was answered in the affirmative. The issue no. 3 , 10 and 11 were determined together and issue no. 4 and 5 were decided together and this manner of clubbing of the issues, has given rise to a substantial question of law at the instance of the appellant in the present appeal. In short, all the issues framed by the first Court were answered either independently or by clubbing two or more issues and the suit filed by the Plaintiff was decreed.

6. In an appeal, the appellate Court confirmed the finding of the Civil Judge Senior Division on determination of four points, which

again face scrutiny in this appeal and this is how the appellant is before us.

7. The following substantial question of law has been formulated when the appeal came to be admitted on 17.02.2010:

'i. Whether the first Appellate Court erred in law in not dealing with all the issues and restricting itself to the points for determination which does not include all the issues affecting the decision of the case on merits.

ii. Whether the first Appellate Court erred in law in not admitting "Family Settlement Deed" document 'Y' marked for identification in evidence when the execution of the said document was admitted by the respondent in evidence; sister of the Appellant who was one of the party to the Family Settlement Deed was examined; Hon'ble High Court in Second Appeal no. 71/2006 had directed to admit the said document in evidence upon proper proof.

iii. Whether Courts below have committed error of law to conclude that the respondent(Plaintiff) was the owner of the suit house in the absence of relief in the suit and in the absence of necessary party to suit viz sister of the Appellant who claims to have right, title and interest to the suit property and when the property is not divided by metes and bounds.

iv. Whether the first Appellate Court committed error of law in holding that there is no question of impounding copy of the document and that it is only an original document that can be impounded thereby not permitting the Appellant to pay stamp duty.'

Since the present appeal being a second appeal, I have to focus on the question of law which arise for determination in the backdrop of the appreciation of facts and law at the instance of the First Appellate Court. I prefer to deal with the question of law in seriatim as under:

Substantial question of law No.1:

The learned Counsel Mr. Kakodkar appearing for the appellant is extremely critical in his submission, about the manner in which the Trial Court has clubbed the issues without rendering any attention as to who was to discharge the burden to prove a particular fact, on which the issue was based. He urged that issue no. 3 which was on the Plaintiff was clubbed with issue no.10 and 11 which was on the Defendant and a finding has been rendered by the Trial Court collectively qua the 3 issues. The same is the position in respect to the other issues which have been clubbed by the Trial Court i.e. issue no.4 and 5, 6 and 7 and he submit that this is a gross violation of the procedure set out in the Code of Civil Procedure, as contained in Order XX Rule 5 which make it imperative for the Court, while dealing with the suits in which issues have been framed to state its finding or decision, with reasons therefor, upon each separate issue, unless the finding upon any or more of the issues is sufficient for decision of the suit. Similarly, Mr. Kakodkar, by referring to the Order XLI Rule 31 also allege that the Appellate Court has also fallen in error when it did not comply with the mandate contained in Order XLI Rule 31 which provide that the judgment of the Appellate Court shall state the point for determination, the decision thereon and the reasons for the

decision and this demerit goes to the root of the matter. Mr. Kakodkar submit that there is no independent finding rendered by the Appellate Court and if the judgment is perused, it is nothing but a collation of Plaintiff's case and the Defendant's case in paragraph 13 whereas in paragraph 14 there is reproduction of the finding of the Trial Court, in absentia of any independent reasoning on part of the Appellate Court and this is nothing short of upholding the finding of the Trial Court without its independent reasoning, which as an Appellate Court it ought to have recorded. It is in this backdrop according to Mr. Kakodkar the first substantial question of law arose as to whether the Appellate Court has erred in not dealing all the issues and restricting itself to the point for determination which do not include all the issues affecting the decision of the case on merits.

He placed reliance on the decision of the Apex Court in case of ***Santosh Hazari v/s. Purushottam Tiwari (Deceased) By LRs¹***. In paragraph 15 their Lordships have held as under:

'15.

.....
The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task

¹ (2001) 3 SCC 179.

of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary, AIR 1967 SC 1124). We would, however, like to sound a note of caution. 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. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment.'

Another decision on a similar line on which Mr. Kakodkar has placed reliance is the case of ***Laliteshwar Prasad Singh And Others v/s. S. P. Srivastava (Dead) through legal representative***², where in paragraph 12, it is held as under:

'12. As per Order 41 Rule 31 CPC, the judgment of the first appellate court must explicitly set out the points for determination, record its reasons thereon and to give its reasonings based on evidence. Order 41 Rule 31 CPC reads as under:

"31: Contents, date and signature of judgment. -The judgment of the Appellate Court shall be in writing and shall state -

a. the points for determination;

² (2017) 4 SCC 415.

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;

and shall at the time that it is propounded be signed and dated by the Judge or by the Judges concurring therein."

It is well settled that the first appellate court shall state the points for determination, the decision thereon and the reasons for decision. However, it is equally well settled that mere omission to frame point/points for determination does not vitiate the judgment of the first appellate court provided that the first appellate court records its reasons based on evidence adduced by both the parties.'

According to Mr. Kakodkar, the Appellate Court has failed to discharge its duty, as a court of Facts and Law.

8. In the backdrop of the said authoritative pronouncements I have perused the order of the Appellate Court which has set out four points for its determination in the backdrop of the contest between the parties and the issues framed by the Trial Court, being: (1) Whether the Plaintiff has purchased plot 'A' of the property known as "Santgalichem Mola" situated at Davorlim; (2) Whether the Plaintiff built another house for himself bearing No.450A in the said property; (3) Whether the Defendant had contributed towards construction of the house No.450A; (4) Whether the Defendant has any right to any portion of the house bearing No.450A.

The Appellate Court, which was hearing the first appeal from the judgment and decree of the Civil Judge and which is

empowered to appreciate the facts as well as law being a Court of first instance and when it deliver its judgment, it shall state its point for determination and its decision thereupon backed by reasons. The judgment impugned, record the reasons by appreciating the evidence placed before the Trial Court and on the four points for determination before it and categorically hold that no evidence has been shown by the Defendant that had either purchased the plot or contributed towards construction of the suit house. Whilst the Trial Court has framed 12 issues, the Appellate Court determined and restricted itself to four points for determination which are germane to the resolution of the controversy. The Appellate Court has appreciated the facts and rendered its own independent findings, on appreciation of evidence which was adduced before the Trial Court. On appreciation of the evidence, reasons are given though not elaborate but briefly and in any case it is not the length of the findings but the substance of the finding which determine the correctness of the conclusion arrived at. Mr. Coutinho is assisted in his submission by the decision of the Apex Court in case of ***Girja Nandini And Ors. v/s. Bijendra Narain Choudhury***³

'It is not the duty of the appellate court when it agrees with the view of the trial court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the trial court. Expression of general agreement with reasons given by the court decision of which is under appeal would ordinarily suffice.'

3 AIR (1967) SC 1124

Another decision from the Apex Court in the case of **G. Amalorpavam And Others v/s. R. C. Diocese Of Madurai And Others**⁴ which exhaustively deal with Order XLI Rule 31 as regards framing point for determination is also brought to my notice by Mr. Coutinho and the relevant observations in paragraph 9 are as under:

'9. The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination.'

The said decision is followed in **Malluru Mallappa (dead) through legal representatives v/s. Kuruvathappa And Others**.⁵ at paragraphs 17 and 18 as under:

4 (2006) 3 SCC 224

5 (2020) 4 SCC 313

'17. In Shasidhar and Ors. vs. Ashwani Uma Mathad and Anr., it was held as under:-

“21. Being the first appellate court, it was, therefore, the duty of the High Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.”

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply (2015) 11 SCC 269 with the requirement of Order XLI Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.”

9. I find that there is no error in law on part of the Appellate Court restricting itself to the point of determination and since it has covered all the issues which were framed for determination by the Trial Court and has adjudicated upon the issues arisen between the parties, the judgment of the Appellate Court do not suffer from any illegality.

10. On the submission of the learned Counsel Mr. Kakodkar on clubbing of the issues by the Trial Court, the following observations of the learned Single Judge of this Court in case of ***Shree Krishna Trading Company v/s. Arvind***⁶ is relevant:

'13. It must be realised that every judge would have his own way of dealing with issues and evidence which come up before him. Except for insisting on compliance to legal requirements of a judgment, it would be improper to expect the judges to write their judgments in any fixed format or apply any fixed format for evaluating such judgments. It would not be necessary for a Judge to reproduce the entire evidence in the judgment or to consider it line by line. The judgment should only indicate that the Judge has applied his mind to the evidence from the reasons which he gives, and from the conclusions drawn. On this count the impugned judgment does not fail.'

Rightly observed as above, the Courts are duty bound to follow the Code of Civil Procedure, but there cannot be strict code for determining the manner and the way a Judge express himself.

6 (2009) 6 MhLj255

11. The question is whether the Courts below have considered the controversy between the parties in the proper perspective and have appreciated the evidence placed before it to establish the facts and what can be considered as a true compliance either on Order XLI Rule 31 by the Trial Court or of Order XX Rule 5 is whether the relevant point for determining the controversy have been formulated and have been decided by recording reasons. The focus of the Court is expected to be on the rival contentions which arise for determination and also to offer an opportunity to the litigants in understanding whether the point of controversy between the two adversaries have been determined on consideration of the material placed by them before the Court.

12. The second substantial question of law revolving around family settlement deed.

The learned Counsel Mr. Kakodkar would submit that the Appellate Court has fallen in grave error in not admitting the family settlement deed when the execution of the said document was admitted by the respondent as well as the sister of the appellant who was also examined and in the second appeal No.71 of 2006 a specific direction was issued to admit the said documents in evidence upon proof thereof. The document was exhibited as "Y" and I have gone through the said document captioned as "Family Settlement Deed" entered in the year 1983 between the Plaintiff and his sister Prema. The recitals of the documents corroborate with the stand taken by the Plaintiffs in the suit, that he had purchased the plot having area of 471.50sq.mts of the funds belonging to him and sister Prema and a house was constructed on the

plot. On account of the strained relationship between the duo, a settlement was arrived at and the same has been reduced in writing. The whole of plot 'A' sub-divided into plot A1 alongwith the house and A2 admeasuring 210 and 261 sq.mts respectively. Worth it to mention that the deed is signed by the plaintiffs as party No. A and his sister as party No.B. The Defendant is not a signatory to the said Deed.

This very document was a subject matter of the second appeal before this Court and by consent the following Order was passed on 22.03.2007: “The document which is marked 'Y' for identification by the Trial Court shall be produced and admitted in evidence upon proper proof by the respondents before the Appellate Court.” Pursuant to the said order, an application was moved before the Appellate Court stating that the original document is not in possession of the respondents and that the copy does not show that it was duly stamped under the provisions of Stamp Duty Act since Section 58 of the Indian Stamp Act contemplate a settlement to be stamped in accordance with Article 15, drawing clue from the decision of the Supreme Court in case of ***Hariom Agrawal v/s. Prakash Chand Malviya***⁷ that the said document in absence of being duly stamped could not be admitted in evidence. Accepting that the document which was sought to be exhibited was a copy of the original, the District Judge by order dated 14.07.2008 permitted to produce in evidence the document marked 'Y' for identification, upon proof that the the said document was duly stamped.

⁷ (2007) 8 SCC 514

13. The contention of the appellant (Defendant) is that he was a consenting party to the said deed of settlement and the submission is when an attempt was made by the appellant before the Appellate Court to pay the necessary stamp duty and admit the same, the request was rejected and when he sought impounding copy of the document, the Appellate Court refused to do it on the ground that only the original document could be impounded. Mr. Kakodkar urge that the Appellate Court has fallen into an error in not accepting the said document, which would have turned the tables. Another submission advanced is a document of family settlement need not be registered and since he was not in possession of the original, the copy of which was produced ought to have been accepted.

Mr. Coutinho, the learned Counsel opposing the submission of Mr. Kakodkar support the finding of the Appellate Court and urge that what can be impounded is only the original document and not a copy and the submission of Mr. Kakodkar that the family settlement need not be registered is not correct and the registration may not be mandatory if there is pre-existing right.

Mr. Coutinho has rightly relied upon the decision of the Apex Court in case of ***Sita Ram Bhama v/s. Ramvatar Bhama***⁸ which has commented upon the evidentiary value of the unregistered and unstamped family settlement and it has been held that registration is necessary if terms of family arrangement/settlement are reduced into writing and the document itself does not create or extinguish any

8 (2018) 15 SCC 130

rights in immovable properties and that the terms of settlement of a family arrangement made under the document itself and if a document of family settlement is unregistered and unstamped, its use can be restricted for collateral purpose for proving possession. It was held as under: -

'11. Pertaining to family settlement, a memorandum of family settlement and its necessity of registration, the law has been settled by this Court. It is sufficient to refer to the judgment of this Court in Kale and others vs. Deputy Director of Consolidation and others, (1976) 3 SCC 119. The propositions with regard to family settlement, its registration were laid down by this Court in paragraphs 10 and 11:

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions: (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family

arrangement is final and binding on the parties to the settlement.

11. The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts, which we shall discuss presently.”

12. We are, thus, in full agreement with the view taken by the trial court as well as the High Court that the document dated 09.09.1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and order of trial court allowing the application under Order XII Rule 3 CPC and the reasons given by the trial court in allowing the application of the Defendant holding the document as inadmissible cannot be faulted.'

14. Further, the decision in case of ***Hariom Agrawal*** (supra) which has been relied upon by the Appellate Court determine the term “instrument” and where the photocopy of original instrument could be impounded on not being insufficiently stamped by exercising the powers under the Stamp Act, 1899. The ratio of the decision can be gainfully applied, by reproducing the relevant paragraphs:

'17.....

*.....
But the power under [Section 37](#) and Rule 19, even after framing the rules by the State Government, could only be exercised for a document which is an instrument as described under [Section 2\(14\)](#). By various authorities of*

this Court, an instrument is held to be an original instrument and does not include a copy thereof. Therefore, [Section 37](#) and Rule 19 would not be applicable where a copy of the document is sought to be produced for impounding or for admission as evidence in a case.'

'19.....

.....

On a plain reading of [Section 48-B](#), we do not find that the submission of the learned counsel for the appellant that by virtue of this provision the Collector has been authorized to impound even copy of the instrument, is correct. Under this Section where the deficiency of stamp duty is noticed from the copy of any instrument, the Collector may call for the original document for inspection, and on failure to produce the original instrument could presume that proper stamp duty was not paid on the original instrument and, thus, recover the same from the person concerned. [Section 48-B](#) does not relate to the instrument, i.e., the original document to be presented before any person who is authorized to receive the document in evidence to be impounded on inadequacy of stamp duty found. The Section uses the phraseology where the deficiency of stamp duty is noticed from a copy of any instrument. Therefore, when the deficiency of stamp duty from a copy of the instrument is noticed by the Collector, the Collector is authorised to act under this Section.'

In light of the aforesaid authoritative pronouncements and the position of law which has been settled, the Appellate Court cannot be

faulted in not admitting the family settlement deed marked for identification as 'Y'.

15. The third substantial question of law:

The Plaintiff who sought a declaration that the house No.450-A is owned by him and the Defendant has no right, title or interest in the said property, the suit came to be decreed by granting such a declaration in his favour. The Defendant who had, during the pendency of the suit obtained entry into the suit property was directed to vacate and hand over the possession to the Plaintiff. The sister of the Plaintiff and the Defendant has stepped into the witness box but since a family settlement was already effected between the Plaintiff and his sister and she had no interest in the suit property in view of the said settlement and since the declaration sought by the Plaintiff was registered only qua the Defendants, she was not a necessary part to the suit. Though the objections to the maintainability of the suit was raised to this effect in the written statement filed by the Defendants, it was not framed as an issue by the Trial Court and necessarily do not form a part of point of determination before the Appellate Court and hence, the said issue cannot be entertained without any foundation in the proceedings before the Court below and therefore do not arise.

16. The fourth substantial question of law:

The said question is already answered while answering the question of law no. 2 and it is answered by holding that it is only the

original document which can be impounded in terms of the decision of the Apex Court in case of ***Hariom Agrawal*** (*supra*).

17. The substantial questions of law answered to the above effect, the concurrent finding rendered by the Court below call for no interference. Upholding the judgment and decree granted in favour of the Plaintiffs the present Appeal is dismissed. Decree be drawn accordingly.

BHARATI H. DANGRE, J.

msr.