

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.351 OF 2022
WITH
INTERIM APPLICATION NO.2805 OF 2022

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Jagdish Jethanand Bhatija

..Appellant

Versus

Sunita Bhagwan Athwani

..Respondent

Mr. Yuvraj Narvankar, for the Appellant.

Mr. Vaibhav Sugdare, Mustafa Kachwala & Roshni Sewlani i/by Kachwala
Misra & Co., for the Respondent.

Mr. Bhagwan Athwani – husband of respondent present in Court.

CORAM : NITIN W. SAMBRE, J.

DATE : 14th NOVEMBER, 2022

PC.

1. Heard.

2. Respondent's suit being Special Civil Suit No.319 of 2013 for getting vacant possession of the suit property from the defendant was dismissed on 24th January, 2017 by an order of Small Causes Court, Pune.

3. The ad-hoc District Judge-7, Pune, vide impugned judgment dated 15th March, 2021 allowed the appeal and decreed the suit. As such, this second appeal.

4. Relying on the judgment of Apex Court in the matter of *Santosh Hazari Vs. Purushottam Tiwari* reported in (2001) 3 SCC 179, contentions are, the judgment impugned delivered by the Appellate Court

sans the very scheme under Order XLI Rule 31 of CPC as the Appellate Court is required to re-appreciate the entire evidence in the backdrop of pleadings and then record findings.

5. As such, the question of law which is sought to be raised is whether Appellate Court's judgment is in tune with the provisions of Order XLI Rule 31 of CPC. Counsel for the appellant so as to substantiate his contention relied on observations made in paragraph 15 of the Appellate Court judgment. Since there appears to be substance in the submissions made by counsel for the appellant, counsel for the respondent/decreed-holder on instructions from the husband of the respondent/plaintiff who is present in the Court Mr. Bhagwan Athwani extend consent for remanding the present appeal to the First Appellate Court. As such, the present second appeal stands allowed. The judgment dated 15th March, 2021 delivered in Regular Civil Appeal No.409 of 2017 is set aside. The interim application also stands disposed of.

6. Said appeal stood restored to the learned District Judge, Pune before whom the parties assure to appear on 5th December, 2022.

7. As such, the issuance of fresh notice to the parties is dispensed with.

8. The Appellate Court is requested to dispose of the appeal expeditiously and in any case within six months from the date of appearance of the parties.

[NITIN W. SAMBRE,