



Arjun

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

**SECOND APPEAL NO.263 OF 2023
WITH
INTERIM APPLICATION NO.3496 OF 2023
IN
SECOND APPEAL NO.263 OF 2023**

Shri. Shashikant Shivaling Gadgade & Anr....Appellants/
Applicants

V/s.

Sou. Saraswati Ramling Langote & Ors. ...Respondents

Mr. Sandesh D. Patil i/b Prithviraj S. Gole, for the
Appellants/Applicants.

**CORAM : MADHAV J. JAMDAR, J.
DATED : JULY 17, 2023**

P.C.:

1. Heard Mr. Patil, learned counsel appearing for the
Appellants.

2. The Respondent No.1 i.e. Plaintiff filed Regular Civil
Suit No.75 of 2012 in the Court of Civil Judge, Junior
Division, Solapur, *inter alia*, seeking partition in agricultural
lands described in paragraph Nos.1-A and 1-B of the suit
properties as well as the house property which is described
in paragraph No.1-C of the plaint.

3. The Appellants who are original Defendant Nos.1 and 2 filed Application bearing Exhibit-32 seeking rejection of the plaint under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as “**the CPC**”). The Learned Trial Court allowed the said application by order dated 28th November 2017 and thereby rejected the plaint. The learned First Appellate Court by the impugned order dated 3rd January 2023 set aside the said order of rejection of the plaint.

4. Mr. Patil, learned counsel submitted that the following substantial questions of law arise in this Second Appeal.

i] Whether the learned First Appellate Court while passing the impugned Judgment and Decree has completely ignored the law laid down by the Supreme Court in the case of *Santosh Hazari Vs. Purushottam Tiwari*¹?

ii] Whether the learned First Appellate Court has passed the impugned order without giving an opportunity to the Appellants who are Defendant Nos.1 and 2?

iii] Whether the First Appeal could have been allowed as original Defendant No.3 has passed away?

5. Mr. Patil, learned counsel pointed out paragraph No.7 of the order passed by the learned Trial Court below

¹ (2001) 3 SCC 179

Application bearing Exhibit-32 in Regular Civil Suit No.75 of 2012. The said paragraph No.7 reads as under :

“Considered arguments of both parties. Perused case record. Perused plaint and written statement. It is rightly argued on behalf of the defendant that **plaintiff has not mentioned valuation of the property mentioned in para No.1-B of the plaint. The plaintiff has also not prayed for declaration that the sale deed executed in favour of defendants No.1 and 2 are not binding on her.** Apart from this, it is contended by the defendant that plaint shall be rejected as per order-7, rule-11, clause-(e) which states that the **plaint shall be rejected where it is not filed in duplicate.** On perusal of the case record, it appears that there is **no duplicate of the plaint is on record. Where a plaint is not filed in duplicate, it shall be considered to be 'not duly instituted' within the meaning or Order-4, rule-3.** Defendants have not mentioned this objection in their application at Exh.32, but learned Advocate of defendant brought to notice of this Court that plaint in duplicate is not filed. **In such circumstances, I found that the plaint is liable to be rejected under provision of Order-7, rule-11, clause-(e).** Hence, I record my finding to Point No.1 in the affirmative.”

(Emphasis added)

6. A perusal of the said paragraph No.7 of the order passed by the learned Trial Court shows that the Defendant Nos.1 and 2 have raised following grounds for the rejection of the plaint and the same have been accepted by the learned Trial Court :

[i] Valuation is not properly mentioned with respect to property mentioned in paragraph No.1-B of the plaint;

[ii] Declaration is not sought that the sale deed executed in favour of Defendant Nos.1 and 2 i.e. with respect to property described in paragraph Nos.1-A and 1-C of the plaint is not binding on the Plaintiff;

[iii] The plaint is required to be rejected as per Order-VII, Rule 11, clause-(e) which states that the plaint shall be rejected where it is not filed in duplicate.

7. Before considering the above grounds for rejection of the plaint, it is relevant to note that the Plaintiff has come up with the case before the learned Trial Court and the learned Appellate Court contending that the Plaintiff has mentioned the valuation of the suit properties properly. It is contended that the Plaintiff has filed the suit for partition by metes and bounds and, accordingly, the court fee stamp given by the Plaintiff is proper. It is the further case of the Plaintiff that the suit cannot be registered without filing plaint in duplicate and the suit gets registered only after filing the plaint in

duplicate. As far as the plaint regarding declaration is concerned the contention raised was that by said sale deeds what was sold was undivided share and as the suit is filed for partition, said declaration is not necessary.

8. In this background, it is important to note that the present Appellants who are Defendant Nos.1 and 2 in the suit have purchased undivided share in suit properties described at 1-A and 1-C. The Plaintiff has also filed suit for partition with respect to property mentioned at paragraph No.1-B. It is settled law that the plaint as a whole alone can be rejected under Order VII Rule 11 otherwise the same cannot be rejected. Thus, the plaint can not be rejected as sale deed executed in favour of the Defendant Nos.1 and 2 are only regarding two suit properties and not all the suit properties.

[*Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd.*²]

9. In paragraph No.5 of the plaint, it is specifically stated that, the Defendant Nos.1 and 2 have purchased undivided share of suit properties described in paragraph Nos.1-A and 1-C and, therefore, there is no substance in the contention raised by Mr. Patil, learned counsel. Therefore, the plaint cannot be rejected as the Plaintiff has not sought relief

² AIR 2017 SC 4477 : (2018) 11 SCC 780

regarding the said sale deeds. It is significant to note that as per the plaint, what is sold is undivided share. The Plaintiff is seeking determination of his share and partition of the same. Therefore, by no stretch of imagination the plaint can be rejected as no relief is sought with respect to sale deeds in favour of the Appellants.

10. As far as the contention regarding valuation is concerned, it is significant to note the provision of Order VII, Rule 11 of the CPC and particularly the proviso thereto. The same is reproduced hereunder for ready reference :

“11. Rejection of plaint.—The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) **where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;**
- (c) **where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;**
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) **where it is not filed in duplicate;**
- (f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless

the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

(Emphasis added)

11. Thus, if a Court reaches to the conclusion that the relief claimed in the plaint is undervalued, and if the Plaintiff on being required by the Court to correct the valuation within a time fixed by the Court, fails to do so then, the plaint can be rejected. Proviso to Order VII, Rule 11 gives power to the Court to extend that time. In this case, it is not the case of the Appellant that such order as contemplated under Order VII Rule 11(b) is passed and therefore, there is no question of non-compliance of the same by the Plaintiff. Thus, there is no question of rejection of the plaint under Order VII Rule 11(b).

12. As far as the contention that the plaint is not filed in duplicate, the Plaintiff has clearly stated that unless the plaint is filed in duplicate it is not accepted and registered. Mr. Patil, learned counsel has failed to point out anything contrary to the said position. There is nothing on record to show that the plaint was not filed in duplicate. Thus, the

learned Trial Court has passed the order completely ignoring the said aspect.

13. Mr. Patil, learned counsel has raised another substantial question of law that the Judgment and Order of the learned Appellate Court is not in accordance with the law laid down by the Supreme Court in the case of *Santosh Hazari* (supra). Mr. Patil, learned counsel has relied on paragraph No.15 of the said Judgment which reads as under :-

“15. A perusal of the judgment of the trial court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. **The first appellate court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. 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 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 v. Bijendra Narain Choudhary*). 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. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact. (See *Madhusudan Das v. Narayanibai*) The rule is — and it is nothing more than a rule of practice — that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has

escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (See *Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh*) Secondly, while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one."

(Emphasis added)

14. There can be no two opinions about the above law as laid down in *Santosh Hazari* (supra). However, the same will not apply to the present case. In the present case by exercising power under Order VII, Rule 11 of the CPC the

learned Trial Court has rejected the Plaint and by the impugned order of the learned First Appellate Court the order of the learned Trial Court is set aside. The learned First Appellate Court has given adequate reasons for setting aside the impugned order. The Appeal before the learned First Appellate Court is only concerning rejection of the plaint. The above discussion shows that there is no substance in the contentions raised regarding rejection of the plaint. However, even if it is assumed that there is some substance in the contentions raised regarding declaration and valuation then also the said contention is not raised regarding all the suit properties. The Supreme Court in the case of *Sejal Glass Ltd.* (supra) has held that it is settled law that the plaint as a whole alone can be rejected under Order VII, Rule 11 of the CPC. Thus, there is no substance in the contentions raised on the basis of the decision of the Supreme Court in *Santosh Hazari* (supra).

15. Mr. Patil, learned counsel has also pointed out that no proper opportunity is given to the Appellants. However, he admits that after service of the Appeal before the learned First Appellate Court, *Vakalatnama* has been filed on behalf

of the Appellants who were the Respondents before the learned First Appellate Court, however, the Appellants were not represented when the Appeal was heard. Therefore, there is no substance in the said contention.

16. Mr. Patil, learned counsel also pointed out paragraph No.19 of the order dated 3rd January 2023 of the First Appellate Court wherein it is noted that the Defendant No.3 has reportedly died. He, therefore, states that, entire Appeal deserves to be dismissed. As far as this contention is concerned, it is significant to note that the said Defendant No.3 is the father of the present Appellants i.e. Defendant Nos.1 and 2. Thus, as the legal heirs and representatives of the deceased Defendant No.3 i.e. present Appellants (original Defendant No.1 and 2) were already on record, there is no substance in the said contention.

17. As there is no substance in any of the substantial questions of law raised by learned counsel appearing for the Appellants, the Second Appeal is dismissed, however, with no order as to costs.

18. In view of dismissal of the Second Appeal, nothing

survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]