

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.725 OF 2022
WITH
INTERIM APPLICATION NO.19921 OF 2022
IN
SECOND APPEAL NO.725 OF 2022

Digitally
signed by
ARJUN
VITTHAL
KUDHEKAR
Date:
2023.04.26
14:28:01
+0530

Dr. Narendra Jagdishchandra Bagga ...Appellant/
Applicant

V/s.

Mr. Dheeraj Bhagwandas Athwani ...Respondent

Mr. Atul S. Tungare, for the Appellant/Applicant.

Mr. Mustafa Kachwala a/w Ms. Ketki Pansare i/b
Kachwala Misar Co., for the Respondent.

Mr. Bhagwandas Athwani present.

Mr. Lalit Athwani present.

CORAM : MADHAV J. JAMDAR, J.
DATED : APRIL 25, 2023

P.C.:

1. Heard learned counsel appearing for the Appellant and
the learned counsel appearing for the Respondent.

2. Both the learned counsel point out order dated 14th
November, 2022 passed by a learned Single Judge in Second
Appeal No.351 of 2022 filed by occupant of another premises

which was owned by the mother of the present Respondent. It is the contention of the Appellant that, same substantial question of law is involved in the present Second Appeal and, therefore, for the reasons set out in the said order, the impugned judgment and decree of the learned First Appellate Court is liable to be quashed and set aside and the Appeal is required to be remanded back to the First Appellate Court. The said order dated 14th November, 2022 passed in the Second Appeal No.351 of 2022 of the learned Single Judge reads as under :

“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.”

3. Learned counsel appearing for the Respondent agrees that the question of law raised in the said Second Appeal No.351 of 2022 is also the question of law in the present Second Appeal and, he also states that, by setting aside the impugned judgment and decree of the learned First Appellate Court, the matter can be remanded back.

4. A perusal of the impugned judgment and decree of the learned First Appellate court clearly shows that the same has not been passed after appreciating the entire evidence on record.

5. Therefore, the impugned judgment and decree dated 15th March, 2021 passed in Regular Civil Appeal No.408 of 2017 is quashed and set aside and the said Regular Civil Appeal No.408 of 2017 is restored to the file of the learned District Judge, Pune.

6. Parties to appear before the concerned District Judge, Pune on 28th April, 2023 when the Regular Civil Appeal No.409 of 2017 as remanded by said order dated 14th November, 2022 is to be listed before the concerned District Judge, Pune.

7. The learned Appellate Court is requested to dispose of the Appeal within a period of 6 months.

8. The Second Appeal is disposed of in above terms with no order as to costs.

9. In view of disposal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

10. Learned counsel appearing for the Respondent states that, father of the Respondent i.e. Mr. Bhagwandas Athwani and brother of the Respondent i.e. Mr. Lalit Athwani both are present in Court. He further states that, they have taken instructions from Respondent-Mr. Dheeraj Bhagwandas Athwani and, accordingly instructed him. He states that, he has advanced submissions in accordance with the said instructions.

[MADHAV J. JAMDAR, J.]