



Sayali Upasani

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

APPEAL FROM ORDER NO.- 1 OF 2023

WITH

CIVIL APPLICATION NO. 1 OF 2023

Shri Parag Babasaheb Bamne, ...Appellant

Age 32 years, Occu – Service,

R/at Prankur Plot No.10,

Road No.7, Sector No.19,

New Panvel, District Raigad,

through power of attorney holder

Babasaheb Dhondiba Bamne,

age 72 years, residing at as above.

Vs.

Shri Pandurang Anandrao Rayte, ...Respondent

Age 55 years, Occu – Service,

R/o S. Ni.27/5, Ambegaon (BK),

Taluka Haveli, District Pune

Mr. Sudhir V. Sadavarte, for Appellant.

Mr.Sanjeev Sawant with Mr. Heramb Kadam with Ms.

Samiksha Mane, for the Respondent.

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 19th AUGUST, 2023

PRONOUNCED ON:- 12 JANUARY, 2024

ORDER:-

1) This Appeal is directed against a judgment and order dated 18th June, 2019, passed by the learned District Judge whereby the learned District Judge was persuaded to partly allow the Appeal, set aside the judgment and decree dated 25th April, 2017, passed by the learned Civil Judge, Senior Division, Pune in Special Civil Suit No. 1044 of 2010 and remand the suit for fresh decision on the issue framed by the learned District Judge in paragraph Nos. 60 and 75 of the impugned judgment and order, purportedly under Order 41, Rule 25 of the Code of Civil Procedure, 1908 ("the Code, 1908").

2) Shorn of unnecessary details, background facts necessary for the determination of this Appeal can be summarised as under:-

(a) For the sake of the convenience and clarity, the parties are hereinafter referred to in the capacity in which they were arrayed before the Civil Court.

(b) A suit for cancellation of agreement for sale, possession, declaration and perpetual injunction was instituted with the assertions that the plaintiff is the owner of the property, situated at Survey No.27, Hissa No. 5, admeasuring 0.1 – R with a ground floor structure admeasuring 67.41 sq. meters and 630 sq. ft. on the 1st floor, at village Ambegaon Budruk, Taluka Haveli, District – Pune (“the suit property”). The plaintiff had availed loans from Canara Bank, Kothrud, Pune and Bharati Co-operative Bank, Pune to construct the building. The loan was outstanding.

(c) In the month of August, 2008, the plaintiff met with an accident and, thus, could not pay the installments of the loan. The plaintiff, thus, decided to raise funds to repay the loan by mortgaging the ground floor of the suit property. Post negotiations, the defendant agreed to advance a sum of Rs.9,00,000/- against the mortgage of the ground floor. The parties agreed that the then value of the suit property was Rs.23,00,000/-. It was agreed that in the event the mortgage money was not repaid within three years, the plaintiff would execute the Sale-deed of the suit property in favour of the defendant upon payment of the balance consideration.

(d) The plaintiff asserted, taking undue advantage of the ill-health of the plaintiff, the defendant got executed a registered agreement for sale on 12th September, 2008. Possession of the ground floor premises was obtained illegally. The defendant also threatened the plaintiff with dire consequences. The plaintiff was constrained to issue a notice to the defendant and also lodge a complaint with the police. The plaintiff apprehended that the defendant would dispossess him of the 1st floor of the suit property as well. The plaintiff was, thus, constrained to institute the suit seeking reliefs of declaration, possession and perpetual injunction.

(e) The defendant resisted the claim by filing a written statement and counterclaim. The defendant claimed that the plaintiff had executed the agreement for sale dated 28th August, 2008 after fully understanding the import of the said document. In accordance with the terms of the said agreement for sale, the defendant had parted with entire consideration of Rs.9,00,000/-. In fact, the defendant was made to pay a sum of Rs1,25,000/- over and above the agreed consideration on the pretext that the plaintiff required the said amount upfront to repay the loan raised from the bank. It was categorically denied

that the agreement for sale was get executed by practicing fraud or misrepresentation.

(f) In pursuance of the said agreement for sale, the defendant was put in possession of the ground floor premises on 31st December, 2008. As the plaintiff avoided to execute the Sale-deed, the defendant had issued a notice on 6th January, 2010. In reply thereto dated 15th January, 2010, the plaintiff had acknowledged the receipt of consideration as well as delivery of possession of the premises on the ground floor. The plaintiff, thus, did not approach the Court with clean hands. On these and other grounds, the defendant prayed for the dismissal of the suit, and, by way of counterclaim, also sought the reliefs of specific performance of the agreement for sale dated 12th September, 2008 by directing the plaintiff to execute the conveyance of the suit property, perpetual injunction to restrain the plaintiff from causing obstruction to the possession of the defendant over the suit property and restraining the plaintiff from alienating or otherwise creating third-party interest in the suit property and a decree for the repayment of the sum of Rs.1,25,000/-, which the defendant was made to pay allegedly over and above the agreed consideration, and compensation.

(g) The learned Civil Judge recorded the evidence of the plaintiff and defendant. Documents were tendered for the perusal of the Court.

(h) After appraisal of the evidence and material on record, the learned Civil Judge was persuaded to hold that the plaintiff failed to establish that the instrument in question dated 12th September, 2008 was illegal and the defendant had illegally obtained the possession of the suit property. The learned Judge, however, found that the plaintiff was in possession of the 1st floor of the suit property. The defendant was also held to be entitled to specific performance of the agreement for sale dated 12th September, 2008. Thus, the plaintiff was directed to execute the Sale-deed in favour of the defendant within two months from the date of the order. The plaintiff was also restrained from causing obstruction to the possession of the defendant over the ground floor of the suit property and from alienating or creating third-party interest till the execution of the Sale-deed in favour of the defendant. In effect, the suit came to be dismissed and the counterclaim was allowed to the extent of execution of the Sale-deed and perpetual injunction.

(i) Being aggrieved the plaintiff-appellant preferred an Appeal being Civil Appeal No. 389 of 2017. By impugned judgment and order, the Appellate Court was persuaded to remit the suit for a fresh determination. The learned District Judge was of the view that the trial Court had not settled proper issues, which arose for determination in the suit as well as the counterclaim. After extensively noting the pleadings of the parties, the learned District Judge observed that the trial court did not properly appreciate the case set up by the parties.

(i) The learned District Judge was of the view that no case for adducing additional evidence under Order 41 Rule 27 of the Code, 1908 was made out. Nor the matter was governed by the provisions contained in Order 41 Rule 23 as the suit was not decided on a preliminary issue. The learned District Judge thereafter proceeded to consider the justifiability of remand under Rule 25 of Order 41. After noting pleadings of the parties copiously, the learned District Judge considered it appropriate to frame 11 issues, in the suit, and 9 issues, in the counterclaim, which would be noted hereinafter. Re-trial was considered necessary on those issues and, thus, the remand.

3) Being aggrieved the defendant had initially preferred Second Appeal. By an order dated 26th September, 2019, the Appellate Court had stayed the impugned order for a period of four weeks. On 22nd July, 2019, this Court had continued the stay granted by the Appellate Court. Pursuant to an order dated 9th December, 2022, the Second Appeal came to be converted into an Appeal From Order, as it was essentially against an order of remand.

4) I have heard Mr. Sudhir Sadavarte, the learned Counsel for the appellant-defendant, and Mr. Sanjeev Sawant, the learned Counsel for the respondent-plaintiff, at some length. The learned Counsel took the Court through the pleadings, evidence and material on record.

5) Mr. Sadavarte urged that the impugned judgment and order is singularly infirm. The learned District Judge has completely misconstrued the power of the Appellate Court to remand a suit for a fresh determination. Having noted that no case for adducing additional evidence under Order 41 Rule 27 of the Code, 1908 was made out and the consequent remand on that count, and the case was also not covered by Rule 23 Order 41, the learned District Judge could not has passed an order of

remand under Rule 25 of the Code, 1908, in the fashion in which it has been passed. The Appellate Court has not merely framed the issues and remitted the issues for determination by the trial Court but the Appeal has been disposed and retrial is ordered, purportedly invoking Rule 25 of the Code, 1908, which is legally impermissible.

6) Mr. Sadavarte would urge that even otherwise no case of remand was made out. The practice of indiscriminate remand where it is not warranted by the facts of the case has been deprecated. Such unjustified remands unnecessarily prolong the life of the litigation. Framing 20 odd issues, which do not appear to have any relevance to the controversy at hand, and directing a retrial on those issues, was wholly unwarranted, submitted Mr. Sadavarte. The learned District Judge, according to Mr. Sadavarte, did not keep in view the principles which govern the power of the Appellate Court to order a remand.

7) To lend support to this submission, Mr. Sadavarte placed a strong reliance on the judgments of the Supreme Court in the cases of Zarif Ahmad (D) through Lrs. And Others Vs. Mohd. Farooq¹ and Smt. Nirmala Devi Vs. Gurgaon Scheduled Caste

1 (2015) 13 SCC 673

Vimukta Agriculture Thrift and Credit Society Limited and Others² .

8) Mr. Sawant, the learned Counsel for the respondent-plaintiff made an endeavour to support the impugned order. Mr. Sawant would urge that the Appellate Court had elaborately considered the pleadings of the parties and arrived at a justifiable conclusion that the Trial Court did not appreciate the real controversy between the parties. The trial Court had not settled the proper issues. An omnibus issue as to whether the defendant was entitled to the prayers in the Counter Claim, was framed by the trial Court. Therefore, the Appellate Court was fully justified in framing the correct issues which arose for determination and remitting the suit for retrial.

9) Mr. Sawant would urge there would be no prejudice to the appellant-defendant as he would get an efficacious opportunity to adduce evidence before the trial Court, if he chooses to. Mr. Sawant would further urge that in the event, the Court finds that few issues framed by the Appellate Court are not germane to the determination of the controversy between the parties, this Court can direct framing of correct issues or frame the issues on which suit ought to be adjudicated by the trial Court.

However, according to Mr. Sawant, there is no ground to interfere with the impugned order, which advances the cause of a just decision, by providing parties an effective opportunity of hearing, on the real question in controversy. It was submitted that as the parties have been litigating since the year 2010, at this length of time, interference with the impugned order would further delay the adjudication of the dispute between the parties.

10) I have carefully considered the aforesaid submissions.

11) To begin with the powers of the Appellate Court. Section 107 of the Code of Civil Procedure, 1907, inter alia, provides that, subject to such conditions and limitations, as may be prescribed, the Appellate court shall have power (b) to remand a case (c) to frame issue and refer them for trial, (d) to take additional evidence or to require such evidence to be taken. Sub-section (2) of Section 107 further clarifies that, subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein.

12) The relevant provisions of Order 41 which regulate the procedure of Appeals from original decrees, in the matter of power of remand, deserve to be noted. In effect, the appellate court is vested with power to remand the suit to the trial court in three situations. The provisions contained in Rules 23, 23-A and 25 of Order 41, read as under :

“23. Remand of case by Appellate Court : - Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23-A Remand in other cases – Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from – Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to

determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.”

13) Under Rule 23, the Appellate Court can remand a case before it, where the Court from whose decree appeal was preferred has disposed of the suit upon a preliminary point and that decree was reversed in appeal. Rule 23-A is in the nature of a residuary power of remand. It deals with the power of the Appellate Court in an appeal against the decree which has been disposed of otherwise than on a preliminary point. Rule 25, on the other hand, envisages the framing of issues by the Appellate Court where it considers that the trial Court has omitted to frame or try any issue or determine any question of fact essential to the right decision of the suit upon merits and refer the same for trial to the Court from whose decree the appeal is

preferred. In such cases, the appellate Court shall direct the trial Court to take additional evidence, if required.

14) If the remand is restricted to decision on an issue or question of fact which the appellate Court considered necessary for a just decision of the suit, as is evident, the trial Court is enjoined to record the evidence and return a finding thereon, along with the reasons therefor to the appellate Court. It implies that the appeal remains pending on the file of the appellate Court and after such findings on the issues so framed and referred to the trial Court are returned, the appeal is to be finally determined.

15) A conjoint reading of the aforesaid Rule 25, with Rule 27 of Order 41 would indicate that there are two options available to the Appellate Court. First, it may record the evidence itself by permitting the parties to produce evidence before it as per Rule 27 of Order 41 or direct the court from whose decree the appeal under consideration has arisen to do so.

16) In the case at hand, as noted above, the appellate Court was alive to the fact that Rule 23 of Order 41 was not attracted as the suit was not disposed of on a preliminary issue. The appellate Court was, however, of the view that the case merited

the remand under Rule 25 of Order 41, as the learned Civil Judge had not framed proper issues. However, the learned District Judge did not follow the mandate of Rule 25 of Order 41 to the fullest. Sub-Rule (2) of Rule 26 of Order 41 emphasises that where the appellate Court resorts to remand under Rule 25 and seeks determination from the trial Court on the issues framed or question of facts indicated, the Appellate Court after considering any memorandum of objection to any of the findings so recorded by the trial Court shall proceed to determine the Appeal. Instead the appellate Court, in the instant case, directed a re-trial on the issues which it considered were required to be framed and decided. The remand, thus, partook the character of the remand envisaged by Rule 23-A of Order 41.

17) A useful reference in this context can be made to a decision of the Supreme Court in the case of Jegannathan V/s. Raju Sigamani and Anr.³ where the three situations in which the appellate Court can order the remand and the consequences which such remands entail, were expounded as under :

“6. Order 41 Rule 23 is invocable by the appellate Court where the appeal has arisen from the decree passed on a preliminary point. In other words, where the entire suit has been disposed of by the trial Court

3 (2012) 5 SCC 540

on a preliminary point and such decree is reversed in appeal and the appellate Court thinks proper to remand the case for fresh disposal. While doing so, the appellate Court may issue further direction for trial of certain issues.

7. Order 41 Rule 23A has been inserted in the Code by Act No. 104 of 1976 w.e.f. February 1, 1977. According to Order 41 Rule 23A of the Code, the appellate Court may remand the suit to the trial Court even though such suit has been disposed of on merits. It provides that where the trial Court has disposed of the Suit on merits and the decree is reversed in appeal and the appellate Court considers that retrial is necessary, the appellate Court may remand the suit to the trial Court.

8. Insofar as Order 41 Rule 25 of the Code is concerned, the appellate Court continues to be in seisin of the matter; it calls upon the trial Court to record the finding on some issue or issues and send that finding to the appellate Court. The power under Order 41 Rule 25 is invoked by the appellate Court where it holds that the trial Court that passed the decree omitted to frame or try any issue or determine any question of fact essential to decide the matter finally. The appellate Court while remitting some issue or issues, may direct the trial Court to take additional evidence on such issue/s.

9. Insofar as the present case is concerned, the trial Court had disposed of the suit on merits and not on a preliminary issue. The first appellate Court set aside the judgment and decree of the trial Court and directed the trial Court to decide the suit afresh after giving parties an opportunity to lead evidence - oral as well as documentary. The nature of the order passed by the appellate Court leaves no manner of doubt that such order has been passed by the appellate Court in

exercise of its power under Order 41 Rule 23A of the Code.”

18) At this stage, it may be expedient to note the issues settled by the trial Court and the findings rendered thereon. They read as under :

TRIAL COURT ISSUES & FINDINGS

Sr. Nos.	Issues	Findings
1.	Whether plaintiff proves that document in respect of the suit property bearing No. 7142 dated 12 th September, 2008 is illegal ?	... In the negative.
2.	Whether plaintiff proves that, defendant has illegally obtained possession of suit property from plaintiff ?	... In the negative.
3	Whether plaintiff proves that, he is in possession over first floor of the suit property ?	... In the affirmative.
4	Whether plaintiff proves that he is in possession over suit property ?	...Of the ground floor only.
5	Is plaintiff entitled for relief, as prayed ?	... In the negative.
6	Is defendant entitled for counter	...Partly.

	claim, as sought ?	
7	What order and decree ?	... As per final order.

19) In the opinion of the learned District Judge, the trial Court ought to have framed following issues in the suit :

APPELLATE COURT ISSUES - SUIT

1. Whether plaintiff prove that he was supposed to execute mortgage-deed in favour of defendant for raising funds for clearing loan of Canara and Bharati co-operative bank as per the talks in between them?
2. Whether plaintiff met with an accident on Sinhagad Road in Anandnagar on 27/08/2008 therefore, he could not able to pay monthly installment of the loan amount due to the medical expenditure and was under tremendous pressure due to financial constraints?
3. Whether plaintiff further prove that defendant forcibly compelled him to take discharge from the Bharti Hospital on his own risk when the concern doctor were not ready to give discharge for the purpose of execution of mortgage-deed however, defendant got executed under misrepresentation agreement to sale ?
4. Whether defendant took forcible possession from the plaintiff of the ground floor on 01/12/2008 using muscle

powers & also got installed electrical meter unauthorizedly by force and pressure?

5. Whether plaintiff is entitled for the declaration that the agreement to sale bearing registered document No. 7142 dt. 12/09/2008 is ab initio, illegal, void and not binding upon the rights of the plaintiffs ?

6. Whether plaintiff is entitled for the declaration that the agreement to sale is cancelled permanently as prayed?

7. Whether plaintiff is entitled for the declaration that the possession taken by the defendant from the plaintiff is illegal and ab initio void ?

8. Whether plaintiff is entitled for the declaration that defendant have no right, title, interest or authority to deal with the suit property by any way?

9. Whether plaintiff is entitled for the permanent injunction sought vide prayer clause 'c'?

10. Whether plaintiff is entitled for the monthly compensation @Rs. 2,000/- total Rs. 34,000/- till the receipt of vacant & peaceful possession from the defendants ?

11. What order, cost and decree ?”

20) Likewise, in the Counter Claim, according to the learned District Judge, the Trial Court ought to have framed the following issues :

APPELLATE COURT ISSUES – COUNTER CLAIM

1. Whether respondent / original defendant, Le., plaintiff in counterclaim prove that original plaintiff & his wife Shobha Rayte were agreed to sale the suit property outrightly & it was not mortgaged transaction ?
2. Whether respondent / original defendant, i.e., plaintiff in counterclaim prove that original plaintiff / defendant in counterclaim agreed to sale ground floor for total consideration of Rs. 9 lacs after vacating the ground floor which was in tenant's possession ?
3. Whether respondent / original defendant, i.e., plaintiff in counterclaim prove that he paid cash Rs. 25,000/- and Rs. 1 lac by a self cheque dt. 08/08/2008 drawn on Bank Of Maharashtra Dhakanwadi branch total Rs. 1,25,000/- towards earnest amount for repayment of the loan dues of Canara Bank?
4. Whether respondent / original defendant, ie., plaintiff in counterclaim prove that advocate Rasal of original plaintiff prepared and finalized draft of agreement to sale & clause No. 22 was added behind back of the respondent / original defendant which was not agreed to him?
5. Whether respondent / original defendant, i.e., plaintiff in counterclaim prove that after payment of entire sale amount, original plaintiff obtained possession

of the first floor from the tenant on 28/12/2008 & plaintiff shifted with family members and utensils on first floor on 30/12/2008 and handed over the vacant possession to respondent / original defendant ie, plaintiff in counterclaim on 31/12/2008 ?

6. Whether respondent / original defendant, i.e., plaintiff in counterclaim prove that plaintiff with malafide intention and ulterior motive started harassing the original defendant, i.e., plaintiff in counterclaim ?

7. Whether defendant in counterclaim, i.e., original plaintiff prove that plaintiff in counterclaim, i.e., original defendant trying to grab entire suit property?

8. Whether respondent / original defendant, i.e., plaintiff in counterclaim is entitled for the directions sought to execute the sale-deed as prayed?

9. What order, decree and cost?

21) Whether the remand for trial on aforesaid issues is justifiable ? It is trite, an omission to frame issue where the parties were fully aware of the case set up by the adversary and the true question in controversy and adduce evidence, does not justify the remand. The Code has undoubtedly given power to the appellate Court to order the remand in different situations. However, the power to remand the suit for retrial is not

uncanalized or unbridled. An indiscriminate remand without recording a finding that the appellate Court is not equipped to decide the matter, on merits, does not advance the cause of justice. Such remand impedes the expeditious conclusion of the journey of litigation, where there is hierarchy of courts. Unjustified remands have been deprecated. The appellate Court is expected to be cautious and circumspect in ordering remand.

22) In the case of Nirmala Devi (supra), on which reliance was placed by Mr. Sadavarte, the Supreme Court after adverting to earlier decisions in P. Purushotham Reddy V/s. Pratap Steels Ltd.⁴ and Nedunuri Kameswaramma V/s. Sampati Subba Rao⁵ observed as under :

“6. In this context, we may also refer to a decision in Nedunuri Kameswaramma (supra), wherein it has been held that “where the parties were fully aware about the rival case and led the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We have referred to this judgment solely for the purpose of the counterclaim. As we have noted earlier, the issue pertained to denial of the ownership of the plaintiff and assertion of the same by the defendants and, therefore, the plaintiff was well aware

4 (2002) 2 SCC 686

5 AIR 1963 SC 884

that there was refutation of the claim. The counterclaim was not, in that way, an independent claim.

7. In view of the aforesaid, the High Court should have been well advised to dwell upon the merits of the case and should not have remanded the matter to the trial court.”

23) In the case of **P. Purushotham Reddy (supra)**, the Supreme

Court had, inter alia, observed as under :

“.....In 1976, Rule 23-A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23-A as it is under Rule 23. After the amendment, all the cases of wholesale remand are covered by Rule 23 and 23-A. In view of the express provisions of these Rules, the High Court cannot have recourse to its inherent powers to make a remand because, as held in **Mehendra Manilal Nanavati v/s. Sushila Mahendra Nanavati**⁶ (AIR p. 399), it is well settled that inherent powers can be availed of *ex debito justitiae* only in the absence of express provisions in the Code. It is only in exceptional cases where the court may now exercise the power of remand dehors Rules 23 and 23-A. To wit, the superior Court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 41 Rule 31 CPC and hence it is no judgment in the eye of the law, it may set aside the same and send the matter back

6 (AIR 1965) SC 364

for rewriting the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided.”

24) A similar view was recorded by the Supreme Court in the case of **Zarif Ahmad (supra)**, on which reliance was placed by Mr. Sadavarte. The Supreme Court also adverted to the decision in **P.Purushotham Reddy (supra)** and enunciated the law as under :

“13. No doubt, Section 107 of CPC empowers the appellate court to remand a case, but it simultaneously empowers the appellate court to take additional evidence or to require such evidence to be taken. Rule 24 of Order XLI CPC, provides that where evidence on record is sufficient, appellate court may determine the case finally. It is not a healthy practice to remand a case to trial court unless it is necessary to do so as it makes the parties to wait for the final decision of a case for the period which is avoidable. Only in rare situations, a case should be remanded e.g. when the trial court has disposed of a suit on a preliminary issue without recording evidence and giving its decision on the rest of the issues, but it is not so in the present case.”

25) Reverting to the facts of the case, as noted above, the learned District Judge was of the view that the issues were not

properly settled. What was at the heart of the dispute ? It was the real nature of the transaction evidenced by the Agreement for Sale dated 12 September 2008.

26) The trial Court found that the Plaintiff did not dispute execution of the said Agreement for Sale. The Plaintiff alleged fraud, but did not furnish particulars thereof. The Plaintiff alleged that it was agreed between the parties that the transaction would be in the nature of a mortgage. The trial Court found the said contention of the Plaintiff was not borne out by the terms of the instrument and the attendant circumstances. The trial Court noted that the Plaintiff acknowledged the receipt of the entire consideration under the said instrument. The Plaintiff also acknowledged delivery of the possession of ground floor of the premises. Holding thus, the trial Court found no merit in the claim of the Plaintiff that the said agreement for sale was illegal, or that the possession of the ground floor premises was obtained illegally.

27) Conversely, the trial Court found the Defendant had parted with the entire consideration under the Agreement for Sale. He was put in possession of the ground floor and he had sought specific performance of the contract by issuing notice to

the Plaintiff and what was required to specifically perform the contract was only execution of the sale deed in favour of the Defendant.

28) In the backdrop of the aforesaid determination by the trial Court, the real question which the Appellate Court ought to have posed unto itself, was whether there was adequate evidence on record to equip and judge the legality and correctness of the findings recorded by the Trial Court. Each party was aware of the case of the adversary. It did not appear that the failure on the part of the trial Court to frame a particular issue, caused grave prejudice to either of the parties. The appellate Court, in any event, could not have framed as many as 20 issues, as extracted above. Many of the issues framed by the Appellate Court are wholly irrelevant for the determination of the controversy between the parties. The trial on the issues framed by the appellate Court would transgress the contours of dispute between the parties and would necessitate adducing of evidence which has no bearing upon the said dispute.

29) Framing of issue in a suit is a matter of crucial salience. Framing of proper issues is imperative to facilitate a correct

decision of the suit. If issues are properly framed, the controversy between the parties is narrowed down and, thereupon, the real dispute between the parties is correctly determined.

30) In the case of Sri Gangai Vinayagar Temple and Anr. V/s. Meenakshi Ammal and Ors.⁷ a three Judge Bench of the Supreme Court underscored the importance of framing of correct issues, as under :

“15..... Issues settled by the court under Order 14 CPC constitute the crystallisation of the conflict of the distillation of the dispute between the parties to the lis, and are in the nature of disputed questions of fact and/or of law. While discharging this primary function, the court is expected to peruse the pleadings of the parties in order to extract their essence, analyse the allegations of the parties and the contents of the documents produced by them, and, thereafter, proceed to frame the issues.”

31) On the aforesaid touchstone, if the issues framed by the Appellate Court (extracted above), are tested, the danger of the trial getting distracted and digressed to the matters which are not at all germane to the determination of the real dispute between the parties as regards the nature and true import of the transaction evidenced by the agreement for Sale dated 12 September 2008, becomes clear and present.

⁷ (2015) 3 SCC 624

32) It is true, the trial Court had framed only one compendious issue as to the entitlement of the Defendant to the reliefs claimed in the Counter Claim. Nonetheless, the parties were fully cognizant that the Defendant sought specific performance of the said agreement to the extent of execution of the sale deed and perpetual injunction to protect his possession and refund of a sum of Rs.1,25,000/- which he claimed to have paid over and above the agreed consideration. The trial Court could have framed separate issues on each of these prayers. However, in the facts of the case, it does not appear that the Plaintiff was prejudiced on account of such compendious issue.

33) In the aforesaid view of the matter, an unbridled remand for adjudication of the 20 odd issues, without recording a finding that the Appellate Court was not equipped to finally decide the appeal on the basis of the evidence and material available on record, was clearly in excess of the jurisdiction conferred on the Appellate Court under the provisions of the Code.

34) The submission of Mr. Sawant that the remand is conducive for a just decision of the case as it provides an opportunity to both the parties to lead evidence, does not merit

countenance. An unjustified remand has the inevitable consequences of prolonging the life of the litigation, especially where the parties understood the real dispute and have had an efficacious opportunity to adduce evidence. An unjustified remand, therefore, cannot be sustained on the ground that the person feeling aggrieved by the order of remand would have an opportunity to participate in the proceedings before the trial Court.

35) The conspectus of aforesaid consideration is that the impugned judgment and order deserves to be quashed and set aside and the First Appeal restored to the file of the learned District Judge for fresh determination in accordance with law.

36) Hence, the following order.

-.ORDER:-

- (i)** The Appeal stands allowed.
- (ii)** The impugned judgment and order dated 18 June 2019 passed by the learned District Judge, Pune, stands quashed and set aside.
- (iii)** First Appeal No.389 of 2017 stands restored to the file of the learned District Judge, Pune, for afresh decision in accordance with law.

(iv) The learned District Judge, Pune is requested to decide the appeal as expeditiously as possible after providing an effective opportunity of hearing to both the parties without being influenced by any of the observations hereinabove.

(v) In the circumstances of the case, no order as to costs.

(vi) In view of the disposal of the Appeal, the Interim Application does not survive and the same stands disposed.

[N. J. JAMADAR, J.]