



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 313 OF 2025

Prakash Babu Pawar

.. Appellant

Versus

Sow. Savitra W/o Shahaji Rathod

.. Respondent

Shri Suyashkumar S. Jangada, Advocate for the Appellant.
Ms. Tanvi V. Jadhav, Advocate for the Respondent.

CORAM : SHAILESH P. BRAHME, J.

DATE : 25TH SEPTEMBER, 2025.

FINAL ORDER :

. Heard both sides.

2. Being aggrieved by decree of recovery of amount of Rs. 90,000/- passed by the Trial Court in R.C.S. No. 32 of 2017 and which is further confirmed by the lower Appellate Court in R.C.A. No. 109 of 2022, appellant has preferred this second appeal.

3. Its a case of the respondent that she was residing with her mother due to disputes with her husband. She was cultivating the land belonging to her father. In the year 2016 appellant approached her for fodder. Accordingly fodder worth Rs. 90,000/- was supplied by the respondent to the appellant. She was promised to pay the amount, but the same was not being

honoured. Appellant was called upon by notice dated 31.03.2017, but he failed to pay Rs. 90,000/-. Hence R.C.S. No. 32 of 2017 was filed for recovery of Rs. 90,000/- with interest.

4. Appellant contested the suit denying all the contentions regarding sell of fodder. It is contended that false suit was filed with an oblique motive as he happened to be close relative of her husband. It is contended that respondent had even filed criminal case bearing R.C.C. No. 27 of 2016, which resulted into his acquittal.

5. Respondent led oral evidence of herself and her sister. Appellant led oral evidence of himself. Trial Court decreed the suit for recovery of Rs. 90,000/- with interest at the rate of Rs. 6% per annum from the date of institution of suit till its realization. The decree was confirmed by the lower Appellate Court.

6. Learned counsel for the appellant Mr. Jangada submits that both the Courts below committed patent illegality in decreeing the suit because there was no tangible evidence to disclose transaction between the parties i. e. sell and purchase of fodder. It is vehemently submitted that the claim of the respondent is false because she is neither owner, nor in possession of any agricultural land. It is submitted that both the Courts below erred in relying on the deposition in R.C.C. No. 15 of 2018, which is not admissible in evidence. It is submitted that the respondent failed to discharge the burden of proving the

transaction between the parties and the alleged default committed by the appellant. It is submitted that lower Appellate Court failed to appreciate the vital admission given by the respondent and her witness.

7. Per contra, Ms. Tanvi Jadhav, learned counsel appearing for the respondent supports impugned judgments. She would submit that the transaction between the parties is cogently established by preponderance of probabilities, taking into consideration oral evidence and admission of the appellant recorded in R.C.C. No. 15 of 2008. It is submitted that the respondent is a rustic illiterate lady, who was being deceived by the appellant and both Courts below have rightly decided in her faovur. It is further submitted that the conduct and credibility of the appellant was taken into account by the Courts below, which cannot be upset in the second appeal.

8. I have considered rival submissions of the parties. There is no dispute that a complaint was lodged by the appellant against the respondent for assaulting him on 12.08.2016 on account of failure to pay her amount. After investigation it was culminated into R.C.C. No. 15 of 2018. The deposition of the appellant who was informant, was recorded by the Court. He was being cross examined by the respondent, who was accused. The respondent was acquitted vide judgment dated 26.08.2019. The copies of the deposition of the appellant and the judgment acquitting the respondent are placed on record.

9. It reveals that in the cross examination it was elucidated that respondent was residing separate from her husband and three acres of land given by her father was her source of income. It was admitted by the appellant that he had purchased fodder yielded from her land. He denied that there was any dues from him. The admission clearly discloses selling of fodder to the appellant. A certified copy of deposition was placed on record and appellant was confronted with it during his cross examination. Thereafter admission was marked as Exhibit 46. Such admission is admissible in evidence. It was being exhibited. No fault can be found in the procedure adopted by the Trial Court. Both the Courts below have rightly appreciated that part of the evidence.

10. In this regard learned counsel for the appellant has relied on the judgment of the Supreme Court in the matter of Seth Ramdayal Jat Vs. Laxmi Prasad reported in *(2009) 4 SCC 560* to buttress that judgment of criminal Court is not admissible in the civil suit. There can be no second opinion about the law laid down by the Apex Court, but that will not help the appellant. In the case at hand the judgment of the criminal court was not sought to be relied in the civil proceedings. It was the admission extracted in cross examination of the appellant, was relevant and, therefore, it was pressed into service.

11. As against that the learned counsel Ms. Jadhav for the

respondent also seeks to rely upon self same judgment and my attention is adverted to para No. 20 of the judgment, which is as follows :

20. It is now almost well settled that save and except for Section 43 of the Evidence Act which refers to Sections 40, 41 and 42 thereof, a judgment of a criminal court shall not be admissible in a civil suit. What, however, would be admissible is the admission made by a party in a previous proceeding.

12. In the present case, though it cannot be said that respondent's admission of any guilt is sought to be proved, but the admission extracted in the cross examination regarding a fact that three acres land was being cultivated by the respondent is relevant and it is permissible for the Civil Court to take cognizance of the same U/Sec. 57 of the Evidence Act. Besides that the respondent adduced her evidence as well as her sister's evidence. Her examination in chief is consistent with her claim. She may not be owner of any agricultural land, but fodder cultivated by her was sold to the respondent has been sufficiently established. I find that on the preponderance of probabilities, it has been established that there was transaction of sale and purchase between the parties.

13. It further transpires from the record that before filing suit appellant was called upon to pay the dues by notice dated 31.03.2017. It was served upon the appellant on 02.04.2017. It was not replied by the appellant. Appellant denied service of the notice. Trial Court elaborately dealt with the said denial by

considering Sec. 27 of the General Clauses Act. His further denial of the signatures was also decided by the Trial Court from his admitted signatures on affidavit in lieu of examination in chief, written statement and vakalatnama by conducting comparison as it is permissible U/Sec. 73 of the Evidence Act. It was recorded that notice was served upon him.

14. Appellant failed to reply notice. He is exposed by the Trial Court by assigning reasons. His credibility was doubted. Considering conduct of the appellant an inference was drawn that he was defaulter. There are concurrent findings of facts recorded by the Courts below by appreciating evidence on record. I do not find that there is any material irregularity in holding that the appellant failed to pay the dues.

15. It is rightly submitted by the respondent that the respondent is a rustic illiterate lady, a destitute. She relied upon the appellant and sold fodder. Such a transaction at village level cannot be gauged in the commercial terms. The agriculturists and the villagers often enter into such a transaction due to their acquittance and mutual trust. For such a transaction documentary evidence may not be available. Considering material on record and conduct of the parties, there is every reason to infer that respondent sold fodder to the appellant and he failed to pay the dues.

16. For the reasons stated above, I do not find any substantial question of law involved in the matter. Second appeal is dismissed.

[SHAILESH P. BRAHME J.]

bsb/Sept. 25