(REPORTABLE)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7991 OF 2015
(ARISING OUT OF SLP (C) No. 18029/2014)

Chintaman Namdev Patil (Dead) .....Appellant(s)

VERSUS

Sukhdev Namdev Patil & Anr. .....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed by the plaintiff against the judgment and order dated 25.02.2014 passed by the High Court of Judicature of Bombay Bench at Aurangabad in Second Appeal No. 332 of 2007 which arises out of judgment and order dated 11.04.2007

passed by the District Judge-3, Aurabgabad in Regular Civil Appeal No. 43 of 2005.

3. By impugned judgment, the High Court allowed the second appeal filed by the respondents herein.

4. In order to appreciate the issues involved in the appeal which lie in a narrow compass, few relevant facts need mention infra.

5. The appellant (plaintiff) filed a suit against the respondents (defendants) herein in the Court of Civil Judge (junior Division) Soyagaon being Regular Civil Suit No. 14 of 2001 for declaration and perpetual injunction. The appellant sought a declaration that he is the owner of the suit land bearing no Gat No. 9 admeasuring 4 H 90 R situated at Village Ghosala, Taluka Soegaon, Dist. Aurangabad. The appellant also sought injunction against the respondents restraining them from interfering in his possession. The respondents joined issues and contested the suit by filing written statement. The Trial Court framed several issues arising out of the pleadings and parties

led their evidence. The Trial Court vide judgment/decree dated 14.12.2004 dismissed the suit.

6. The appellant, felt aggrieved, filed appeal being R.C.A. No. 43 of 2005 before the District Judge-3, Aurangabad. Vide judgment/decree dated 11.04.2007, the first appellate Court allowed the appeal and decreed the appellant's suit by granting the decree as prayed by him.

7. The respondents, felt aggrieved, filed second appeal being S.A. No. 332 of 2007 before the High Court.

8. The High Court admitted the second appeal on two substantial questions of law arising in the case. By impugned judgment, the High Court allowed the second appeal and in consequence dismissed the appellant's suit. It is against this judgment, the plaintiff has filed this appeal by way of special leave.

9. Heard learned counsel for the parties.

10. Learned counsel appearing for the appellant while assailing the legality and correctness of the

impugned order made twofold submissions. In the first place, learned counsel contended that the High Court while allowing the appeal did not give any reason and nor dealt with the substantial questions of law framed much less answered them on their merits thereby committed a jurisdictional error in allowing respondents appeal which resulted in dismissal of appellants suit. It was his submission that in the absence of any discussion much less finding on the two substantial questions of law framed, the High Court failed to exercise its second appellate jurisdiction under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") in its proper perspective and hence impugned judgment being unsustainable, deserves to be set aside by remanding the case to the High Court for deciding the second appeal afresh on merits in accordance with law.

11. In the second place, the learned counsel for the appellant contended on merits that the impugned

judgment is also not legally sustainable. Learned counsel then made attempt to point out the errors of the controversy on merits.

12. In reply, learned counsel for the respondent supported the impugned judgment contending that no interference is called for in the impugned judgment.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to accept the first submission of the learned counsel for the appellant finding force therein.

14. It is clear that the High Court admitted the second appeal on following two substantial questions of law:

> **"(i) Whether in the facts and circumstances of the present case, the first appellate Court was right in holding that the respondent No.1/plaintiff became exclusive owner of the suit land by virtue of the family arrangement shown in the document (Exh.101)? and that the interpretation of the said document (Exh.136) is properly done by the said Court?**
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> **(ii) Whether in the facts and circumstances of the present case, the judgment of the first appellate Court is against the spirit of Order 41 Rule 31 of C.P.C. is unsustainable and deserves to be interfered with?"**

15. The High Court then discussed the issues in paras 5, 6 and 7 which read as under:

> **"5. In view of analysis of the facts mentioned above, the only question that is required to be decided is, whether plaintiff-Chintaman has fulfilled his terms of contract?**
>
> **6. On perusal of the evidence, I found that the finding recorded in this regard by learned Judge of the trial Court is correct. Learned Judge of the lower appellate Court, however, did not record proper finding on the factual aspect of the case. Because of his failure to do so, the entire judgment went haywire. Learned counsel for the parties fairly admitted that at least, document Exhibit 136 is binding on the parties. Document 116, which is not signed by the plaintiff-Chintaman, is not admitted by him, but in view of his admission of document Exhibit 136, it is clear that he admitted the agreement. On perusal of this agreement, it is clear that he had agreed to repay the entire loan mentioned above for getting clear title to the land Gat No. 9. He also admitted that in case of his failure to do so, he would accept the partition of the land amongst the three brothers.**
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> **7. In view of the finding of facts that the plaintiff did not repay the loan amount and that he had committed default, he would not be able to claim ownership to the entire land Gat No.9. The suit should, therefore, fail. The Second Appeal is allowed. The suit stands dismissed."**

16. On perusal of the judgment it clearly shows that the High Court neither set out the case of the parties

from their pleadings properly nor mentioned the findings recorded by the Trial Court and nor of the first appellate court. The High Court also did not examine the case in the context of legal provisions governing the issues and nor dealt with any submissions urged by the parties much less to record categorical finding on the questions framed.

17. On the contrary, we notice that the High Court in para 5 formulated another question as the only question arising in the case for decision which was not formulated as substantial question of law along with two questions already framed.

18. In our considered opinion, it was legally obligatory upon the High Court to properly set out the case of the parties, findings recorded by the Trial Court and the first Appellate Court, arguments of the parties on the questions of law framed and then answer the questions framed in the light of law applicable to the controversy involved by giving its

reasoning. Order 20 Rule 4(2) and Rule 5 read with Order 41 Rule 31 provides for this requirement.

19. We may also consider apposite to mention that this Court had the occasion to examine the scope of Section 100 of the Code in **Santosh Hazaro vs. Purushottam Tiwari (deceased) by LRs.,** [(2001) 3 SCC 179], wherein Justice R.C. Lahoti (as His Lordship then was and later became CJI) speaking for the three-judge Bench explained the scope and jurisdiction of the High Court while deciding the second appeal under Section 100 of the Code. The High Court, in our opinion, should have kept in consideration the law laid down in this case while deciding the second appeal.

20. We cannot, therefore, subscribe to the manner in which the High Court cursorily decided the appeal as we find that the impugned judgment does not satisfy the requirement mentioned above. In such circumstances, the remand of the case to the High Court appears to be proper.

21. The appeal thus succeeds and is accordingly allowed. The impugned judgment is set aside. The matter is remanded to the High Court for deciding the second appeal afresh on merits in accordance with law.

22. We, however, make it clear that we have not examined on the merits of the issues involved in this case and hence the High Court would decide the appeal without being influenced by any observation made in this judgment.

23. Since the case is quite old, we request the High Court to expedite its hearing and dispose of the case preferably within six months.

.....J.
[J. CHELAMESWAR]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
September 28, 2015.