



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

APPEAL AGAINST ORDER NO.46 OF 2022

Subhadrabai w/o Bhauraoji Thakre,
Aged 61 years, Occupation-Agriculturist,
R/o. Shivani, Tahsil-Kamptee,
District-Nagpur, presently at Plot No.57,
Hiwari Nagar, Near Rajendra Kirana
Store, New Bagadganj, Nagpur
(Original Plaintiff on R.A.).

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Appellant

..Versus..

1. Sharad s/o Gopal Bhoyar,
Aged 26 years, Occupation-Agriculturist.
2. Smt. Panchashila d/o Gopal Bhoyar,
Aged 31 years, w/o Munna Tajne,
Agriculturist.
3. Ku. Archana d/o Gopal Bhoyar,
Aged 24 years, Agriculturist.

All R/o. At Palsad, Post-Dighori (Kale),
Tahsil-Kamptee, District-Nagpur.

4. Mrs. Sunita d/o Gopal Bhoyar,
w/o Nagorao Khole, Agriculturist;
R/o. C/o. Eknathji Singne,
89, Sunmarge Nagar, Near Mangesh
Decoration and Datta Mandir,
Hudkeshwar Road, Nagpur.
Tahsil and District-Nagpur.

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Respondents

Shri O.A. Ghare, Advocate for Appellant.
Shri A.S. Kulkarni, Advocate for Respondents.

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CORAM : PRAVIN S. PATIL, J.
RESERVED ON : 26.09.2025.
PRONOUNCED ON : 07.10.2025.

JUDGMENT :

1. The grievance raised by the appellant in the present appeal is that the learned District Judge, Nagpur has wrongly remanded back the matter to the trial court without considering the factual as well as legal position. On that count impugned judgment and order dated 2.9.2022 passed in the Regular Civil Appeal No.260/2017 is under challenge in the matter.

2. In the present appeal, for the sake of convenience, the appellant hereinafter referred as the plaintiff and the respondents are referred as defendants.

3. It is the case of the plaintiff that she entered into an agreement with defendants to purchase the field Survey No. 194-A and 194-K ad-measuring 0.81 R and 0.74 R of mouza

Chikhli, Tahsil-Kamptee, District-Nagpur for the consideration of Rs.1,91,500/- on 28.3.2002. At the time of agreement, plaintiff had paid Rs.60,000/- as an earnest amount to the defendants. The balance consideration was decided to be paid at the time of executing the sale deed of the suit property. The date of execution of sale deed was decided on or before 28.2.2005.

4. According to the plaintiff, at the time of execution of agreement of sale, the possession of the suit field was handed over by the defendants and accordingly she is in actual possession since the date of agreement of sale.

5. As per agreement of sale, the defendants were avoiding to execute sale-deed in favour of plaintiff. Therefore, legal notice was issued to defendants stating that the plaintiff is willing to execute sale-deed and ready to pay balance amount. But defendants were avoiding to execute sale-deed. Hence, suit for specific performance of contract, declaration, permanent injunction and in alternative return of earnest money was filed.

6. The defendants before the Trial Court denied the agreement of sale took place between them. According to the defendants, they are in the physical possession of the land and same was never handed over to the plaintiff. According to the defendants, the transaction was a money lending transaction and as a security for the hand-loan the agreement of sale was executed between the parties. The defendants accordingly denied the averment made by the plaintiff in his suit and stated that they are willing to repay the entire hand-loan to the plaintiff.

7. In addition to this, the defendants stated that the plaintiff is not the agriculturist, therefore, she has no right to purchase the agricultural field without obtaining due permission from the competent authority.

8. In the light of rival submission between the parties, the learned Trial Court framed the following issues along with findings thereon :

Sr.No.	Issues	Findings
1.	Whether the plaintiff proves that the defendants entered into an agreement of sale with her in respect of the suit property @ Rs.50,000/- per acre for total consideration of Rs.1,31,500/- on 28.3.2002.?	In the affirmative.
2.	Whether the plaintiff proves that she paid Rs.60,000/- plus Rs.5,000/- as earnest amount to the defendants and balance amount was agreed to be paid at the time of execution and registration of the sale-deed.?	In the affirmative.
3.	Whether the plaintiff proves that the defendants delivered the actual possession of the suit property to her and since then, she is in possession.?	In the affirmative.
4.	Whether the plaintiff proves that she was and is ready and willing to perform her part of contract.?	In the affirmative.
5.	Whether the plaintiff is entitled for the relief of specific performance of contract or refund of earnest amount with interest and damages, as prayed for.?	In the affirmative.
6.	What order and decree.?	Suit is decreed with costs as per final order.

9. On the basis of above said finding and the reasons recorded thereon, the trial court has decreed the suit and defendants were directed to execute the sale deed in favour of the plaintiff by accepting the balance consideration amount of Rs.1,26,500/- from the plaintiff within a period of two months

from the date of judgment and order.

10. The judgment of the trial court was challenged by the defendants in Regular Civil Appeal No.260/2017 before the learned District Judge, Nagpur. According to the appellant, the learned trial court failed to consider the legal as well as factual position in the matter. According to the defendants, the learned trial court failed to consider the fact that the agreement which was executed between the parties is unregistered and, therefore, the said document cannot be accepted as a valid document. The further finding of the learned trial court recorded in favour of the plaintiff was challenged in the statutory appeal.

11. The learned District Judge by the impugned judgment decided the appeal and after considering the submission and by recording the findings remanded back the matter to the trial court directing to frame the additional issues as per the observations made by him in the judgment within a specific time period. The said judgment is under challenge in the present appeal.

12. I have heard both the counsels at length and perused the record as well as the case laws pointed out by both the counsels in the matter.

13. The submission of the appellant in the present appeal is that the learned trial court while deciding the suit has framed the issues on the basis of submission made by the parties before him. According to him, if there was failure on the part of the trial court to frame the issues properly, the defendants have an opportunity to raise the grievance during the course of trial to raise the additional issues under the provisions of Code of Civil Procedure and more particularly under Order 14 Rule 5 for determining the matter in controversy between the parties. However, the defendants failed to raise such issue at the relevant time, consequently, the appellate court committed an error by directing the trial court to frame additional issue and decide the same.

14. It is further submission of the appellant that the main petition filed by him with a grievance that there was an agreement of sale of the suit property and defendants were avoiding to execute the sale deed. Therefore, the suit for

specific performance of contract was filed along with declaration and permanent injunction as the possession of the suit was with the plaintiff.

15. The parties after framing the issues were satisfied that rival submission was covered by those issues and accordingly lead evidence before the trial court. Hence, once the suit was decided on the basis of issues framed, the appellate court can only look into the said issues, whether same were properly dealt with by the trial court in accordance with the evidence available on record or not. It is not necessary for the appellate court to direct the trial court to frame the additional issues on the basis of submission which was never made or raise before the trial court.

16. The appellant further pointed out that, the learned appellate court while deciding the appeal failed to record any findings on the issues which are raised from Sr. No.1 to 5. Therefore, the learned appellate court failed to exercise his powers and by exceeding its jurisdiction directed the trial court to frame the additional issues to decide the suit afresh in the matter.

17. The appellant in support of his submission has relied upon the judgments of Hon'ble Supreme Court in the case of *Santosh Hazari*, reported in *(2001) 3 SCC 179*, *Mahendra s/o Mahadeo Deshbratar and others*, reported in 2014 (6) All MR 689 and *Shivakumar and others .vs. Sharanabasappa and others*, reported in *(2021) 11 SCC 277*.

18. The learned counsel for the respondents has pointed out that under the provisions of Order 41 Rule 25 of the Code of Civil Procedure, if the appellate court found that the learned court below omitted to frame or try any issue which according to the appellate court is essential to decide the suit upon the merits, the appellate court can either frame the issues and refer the same for trial to the court from whose decree the appeal is preferred and can also direct to take additional evidence if required in the matter.

19. According to the defendants, the learned lower appellate court while deciding the appeal has categorically recorded the finding that in the written statement of the defendants before the Trial Court, there is a specific averment

that the plaintiff is not an agriculturist so she cannot purchase the agricultural land. It is also recorded that agreement to sale was admittedly an unregistered document. The defendant no.4 was shown as minor at the relevant time. The issue of delivery of the possession was disputed by the defendants in their written statement. The agreement of sale was recorded on a stamp paper of Rs.20/- only. Hence, according to the appellate court, it was necessary to verify by the learned trial court the provisions of the Maharashtra Stamp Act to determine the validity of the documents. So also as per the provisions of Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, there is a prohibition of sale of agricultural land in favour of a person who is not an agriculturist. Hence, according to the appellate court, these issues were material to decide the controversy involved in the present matter. Hence, by exercising the powers available to the Appellate Court under Order 41 Rule 25 of the Code of Civil Procedure, the discretion has been exercised in the matter. Hence, no fault can be found in the judgment and order of the learned lower appellate court.

20. In respect of not recording any finding on the issues nos.1 to 6 framed by the lower appellate court, it is the submission of the defendants that due care has been taken by the learned lower appellate court that while deciding the suit afresh, the trial court should not be influenced by the findings recorded by the lower appellate court. Hence, according to the defendants, learned appellate court was justified in not recording any finding on the issues particularly when the appellate court was of the opinion that the matter is required to be remanded back to the trial court to decide the issues for which the evidence is necessary to be recorded by the parties.

21. In the backdrop of above said submission of both the counsels, I have gone through the judgment which the appellant has relied upon in the matter.

22. In the case of *Santosh Hazari* (supra), it is held by Hon'ble Supreme Court of India that appellate court 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. If this is done then it can be concluded that appellant court has

satisfied that it has discharged the duty expected of it. However, in the present case, the learned lower appellate court failed to exercise the powers as appellate court has not recorded any findings arriving at a different conclusion in the matter. Therefore, according to the appellant, there is an apparent mistake on the part of appellate court and hence indulgence of this court is required in the matter.

23. The appellant has relied upon the judgment in the case of ***Mahendra Deshbratar*** (supra), wherein this court has observed in respect of payment of requisite stamp duty on the document that once judicial authority has decided to admit the document into evidence though unstamped, the third party has nothing to do about it, because once insufficiently stamp document is tendered in evidence and marked as exhibit without any objection in the trial court, the court is prohibited from reopening the matter after the documents gets admitted in evidence. Hence, according to the appellant, in respect of finding of the learned lower appellate court that agreement of sale is an unregistered document and, therefore, the provisions of Maharashtra Stamp Act was required to be looked into is

totally uncalled for in view of the law laid down by this Hon'ble Court in the matter.

24. The appellant then relied upon the judgment of the Hon'ble Supreme Court in the case of ***Shivakumar and others*** (supra) wherein Hon'ble Supreme Court has held in para 26.3 and 26.4 as under :

26.3. A comprehension of the scheme of the provisions for remand as contained in Rules 23 and 23A of Order 41 is not complete without reference to the provision contained in Rule 24 of Order 41 that enables the appellate court to dispose of a case finally without a remand if the evidence on record is sufficient; notwithstanding that the appellate court proceeds on a ground entirely different from that on which the trial court had proceeded.

26.4. A conjoint reading of Rules 23, 23A and 24 of Order 41 brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an appellate court is to follow the mandate of Rule 24 of Order 41 CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the appellate court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the trial court may not be considered proper in a given case because the first appellate court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There

could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.”

According to the plaintiff in view of judgment of Hon'ble Supreme Court of India, order of remand on the ground that points touching appreciation of evidence were not dealt with by the trial court may not be proper because first appellate court is itself possess the jurisdiction to enter into the facts and appreciate the evidence. The order of remand cannot be passed merely for the purpose of allowing party to fill up the lacuna.

25. Hence, relying upon these case laws, it is the submission of the appellant that the learned District Judge has committed an error by remanding back the matter to the trial court and hence impugned judgment is liable to be quashed and set aside.

26. The defendants have relied upon the judgment of ***J. Balaji Singh .vs. Diwakar Cole and others, reported in (2017) 14 SCC 207***, wherein the Hon'ble Supreme Court has observed

that remand order can be passed in three situations, firstly, under Order 41 Rule 23, where the trial court disposed of the suit upon preliminary point, secondly, Appellate Court considers necessity retrial of matter after reversal of decree passed by trial court and thirdly, if the appellate court is of the opinion that the issues which are not decided are essential for right decision in suit and said issue was not framed by the trial court. Hence, in the light of this judgment of the Supreme Court, the defendants stated that the findings recorded by the learned District Judge cannot be upset in the matter.

27. In view of rival submission it will be relevant to reproduce the Order 41 Rule 25 of the Code of Civil Procedure which states as under :

“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)."

The above said provision gives ample powers to the appellate court to remand the matter for trial. If the appellate court is satisfied that there is a need to frame additional issues and parties are necessary to adduce evidence on the same issues.

28. In the light of above said factual and legal position, the perusal of the record shows that the defendants in their written statement have categorically stated that the plaintiff is not the agriculturist, therefore, she has no right to purchase the agricultural field without obtaining due permission from the competent authority. The issue raised by the plaintiff in the suit is of execution of sale deed under the provisions of Specific Relief Act. Hence, this issue goes to the root of the case, as to whether, the plaintiff is an agriculturist or not and secondly without obtaining due permission from the competent authority, he can execute the agreement of sale. But admittedly this issue was not framed by the trial court while deciding the suit.

29. It is further pertinent to note that though first appellate court is a continuous proceeding of a suit and first appellate court can re-appreciate the evidence. However, this principle is not applicable in the matter, particularly when the issue which goes to the root of the case was not framed by the trial court and no evidence was recorded thereon. Therefore, the legislature has given powers to the appellate court under Order 41 Rule 25 of the Code of Civil Procedure.

30. The bare perusal of this provision clarify the fact that the appellate court has been given discretion either to frame the additional issue and decide the same or if the appellate court felt it necessary that for the right decision of the suit upon the merits, additional issues are required to be framed and evidence is to be recorded thereon, then the matter can be remanded back to the trial court. The findings recorded by the appellate court in the matter are not in dispute. The only objection raised by the appellant is that it is the fault of the defendants to point out the trial court to frame the additional issue in the light of their written statement. Hence, considering the legal position and ultimately in a judicial proceeding it is expected to do the

substantial justice between the parties, I find no reason to interfere in the findings recorded by the learned District Judge, Nagpur.

31. The law laid down by the Hon'ble Supreme Court is not disputed in the matter. The appellant is correct in saying that the appellate court while deciding the appeal 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. However, in the present case, the appellate court has taken a care that instead of recording the reasons different than the trial court, which would ultimately cause prejudice in the matter, has rightly recorded the finding as "redundant", so that the trial court can independently decide the additional issues in the matter. In view of this, I am of the opinion that the judgment relied in the case of ***Santosh Hazari*** (supra) is not applicable in the matter.

32. In respect of the judgment in the case of ***Mahendra Deshbratar***, the appellant is justified in stating that once insufficiently stamped document is tendered in evidence and marked as exhibit without any objection in the trial court so as

to invite judicial determination to decide its admissibility, the court is prohibited from re-opening the matter after the document gets admitted in evidence. Therefore, this issue at the most which was directed to be framed is unwarranted in the matter.

33. In the case of *Shivakumar* (supra) which is relied upon by the appellant, it is clear from the findings recorded by the Hon'ble Supreme Court that remand is not permissible particularly when the appellate court itself possessed jurisdiction to enter into facts and appreciate the evidence. However, this principle of law is applicable when the issues are determined by the trial court and appellate court has to only appreciate the evidence. But in the present case, the appellate court is of the opinion that additional issues are required to be framed in the matter and the parties to lead evidence on the said additional issue. Therefore, in absence of findings on that issue, the appellate court cannot exercise the power of re-appreciation of evidence. Hence, according to me, the ratio laid down in this judgment is not applicable in the matter.

34. The defendants, according to me, have rightly relied upon the judgment of **J. Balaji Singh** (supra) wherein Hon'ble Supreme Court has rightly held that appellate court can remand the case to the trial court when it finds that certain issues which are essential to the right decision of the suit and was not framed by the trial court, it will be expedient to reproduce the findings recorded by the Hon'ble Supreme Court in the case of **J. Balaji Singh** (supra) in para 14 to 14.3 as under :

14. There are three provisions in the Code which deal with the power of the appellate court to remand the case to the trial court. These provisions are Order 41 Rules 23, 23-A, and 25:

14.1. So far as Order 41 Rule 23 is concerned, it enables the appellate court to remand the case to the trial court when it finds that the trial court has disposed of the suit upon a preliminary point. The appellate court in such cases is empowered to direct the trial court to decide all the issues on evidence on record.

14.2. So far as Rule 23-A is concerned, it enables the appellate court to remand the case to the trial court when it finds that though the trial court has disposed of the suit on all the issues but on reversal of the decree in appeal, a retrial is considered necessary by the Appellate Court.

14.3. So far as Rule 25 is concerned, it enables the Appellate Court to frame or try the issue if it finds that it is essential to the right decision of the suit and was not framed by the trial court. The appellate court in such case may, accordingly, frame the issues and refer the same to the trial court to take the evidence and record the findings on such issues and return to

the appellate court for deciding the appeal. In such cases, the appellate court retains the appeal to itself.”

35. Now coming back to the facts of the present case, it is clear that the learned trial court failed to frame the issue, whether the plaintiff is an agriculturist or not or entitle to purchase the agricultural field without obtaining due permission from the competent authority, though it was specifically pleaded in the written statement of the defendants. The learned appellate court, while dealing with the matter, has specifically observed that as to whether plaintiff was an agriculturist or not is material because same goes to the root of the case. It is specifically held that the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 prohibits sale of agricultural land in favour of a person who is not an agriculturist. But again under the same provision there are exceptions carved out by legislation. As such, this issue is required to be framed and the parties are required to lead evidence on this issue. Therefore, considering the findings recorded by the learned District Judge, I am of the opinion that he has rightly exercised its jurisdiction to remand the matter back to the trial court.

36. In the circumstances, at the most, it can be said that the present defendants were not diligent while conducting the case before the trial court, they were having an opportunity as per the provisions of law to move appropriate application for framing additional issue before the trial court. They failed to take appropriate steps in the pending civil suit. However, the appellant can be compensated for the fault of the defendants by imposing cost on the defendants. Hence, considering over all factual and legal position of the matter, I proceed to pass the following order :

O R D E R

(1) Appeal Against Order is hereby **dismissed**.

(2) The respondents-defendants are directed to pay the cost of Rs.15,000/- to the appellant within a period of fifteen days and in any case before framing of additional issue by the trial court as directed as per the judgment of learned District Judge, Nagpur dated 2.9.2022. There shall be no order as to costs.

(Pravin S. Patil, J.)