

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 279 OF 2005

Sou.Swati Vinayak Pathak & ors.

... Appellants.

Versus.

Shri Ramesh Narhar Dharap.

... Respondent.

Shri A.V.Anturkar i/by Smt.Vinita V.Bakre-Shastry for  
the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 23rd March, 2005.

P.C.:

1. Heard Shri Anturkar for the Appellants. He pointed out that the Appellants had filed a Declaratory Suit claiming declaration that they are the tenants in respect of the suit premises. The said suit was decreed and the Appeal preferred by the Respondent against the said Decree was dismissed and being aggrieved by the said Judgments and Decrees, the Respondent has filed a Writ Petition No.2520 of 1996 in this Court. He states that the said Writ Petition has been admitted for final hearing and is pending.

2. The following substantial questions of law arises in  
the Second Appeal:

(i) Whether the learned District Judge is right in observing that no party will be allowed to adduce any evidence, contrary to the agreement

or contrary to terms and conditions of the agreement at Exh.65 dated 17th March 1980 in the light of sections 91 and 92 of the Indian Evidence Act ?

(ii) Whether the learned District Judge is right in observing that the entries in the Books of Accounts are merely corroborating pieces of evidence of facts stated therein, and therefore, unless independent evidence has come on record those entries in the books of accounts cannot be accepted as a proof or evidence particularly the Account Books at Exh.89 to Exh.123?

(iii) Whether the learned District Judge is right in observing that the Books of Accounts kept in the regular course of the business are admissible, but those are only relevant only as corroborative evidence and not an independent evidence ?

(iv) Whether the learned District Judge was right in not taking into consideration the documents which are not exhibited in the present proceedings namely Civil Suit No.1148 of 1987 though the earlier suit between the parties was decided on the basis of those documents ?

3. The Second Appeal is admitted on the aforesaid substantial questions of law.

4. Printing is dispensed with and the Appellant is directed to file private paper book and decree forms within a period of six months.

5. Liberty to file application before the learned Chief Justice for placing the Second Appeal for hearing along with the Writ Petition No.2520 of 1996.

Judge.