

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

**SECOND APPEAL NO.232 OF 2008**

**Dinesh Ramanlal Ponda** : Appellant.  
**Versus**  
**Kanhya Ditya Machhi**  
**since deceased through LRs**  
**Jagan Kanhya Machhi and ors.** : Respondents.

**Mr. R C Shah for the Appellant.**  
**Mr. N V Gangal for the Respondent Nos.1/1, 1/2, 2A to 2C and 3A.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 06<sup>th</sup> December 2012**

**P.C.**

1 Heard. Admit on the following substantial questions of law :-

[A] The learned Judge failed to appreciate that the suit was filed was a suit for recovery of possession of land as based on title of the plaintiff to the suit land

[B] The learned Judge ought to have held that since it was a suit for possession on title on the Appellant/Plaintiff proving his title to the suit property, the suit has to be allowed and decreed.

[C] On death of Respondent No.3 on 20-3-2006, who was Appellant No.3 in the Appeal before the Lower Appellate Court, the Appeal filed in Lower Appellate Court stood abated & could not have been heard and ought to have been dismissed.

2            However the hearing of the above Second Appeal is expedited. The Appellant is directed to file a private paper book within a period of three months from date.

**[R.M.SAVANT, J]**