

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.578 OF 2001

Deepaklal Jagannath Rathi ...Appellant

Vs.

Malojirao Sadashiv Mogal ...Respondent

Mr.R.D.Soni for the Appellant
Mr.H.E.Palwe for the Respondent.

CORAM: A.S.OKA, J.
DATED: APRIL 21, 2006.

P.C.:

1. Heard Advocates for the parties. Following substantial questions of law arise :

i) Whether the Courts below committed an error by rejecting the prayer made for remand only on the basis of an affidavit filed by the learned Advocate appearing for the defendants ?

ii) Whether the Appellate Court completely ignored the fact that a serious prejudice has been caused to the Appellant-Plaintiff as the Trial Court re-casted the issues at the time of delivering the Judgment without notice to the parties ?

iii) Whether the Judgment of the Appellate Court is perverse in as much as the Appellate Court on the basis of Affidavit

filed by the Advocate for the defendants has accepted as correct the practice allegedly followed by the particular trial Court in as much as the alleged practice is per se contrary to the provisions of the Code of Civil Procedure, 1908 ?

2. Second Appeal is admitted on the aforesaid substantial questions of law. Advocate for the Respondent waives service. Printing is dispensed with. The Advocate for the Appellant is directed to file private paper book within a period of one year from today.

Judge.