

(2015) 06 BOM CK 0225

In the Bombay High Court

Case No : Second Appeal Nos. 83 and 84 of 1993

Avinash Anna Chougule

APPELLANT

Vs

Kashibai Ishwara Done and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100(5), 96
Evidence Act, 1872 — Section 90

Citation : (2015) 06 BOM CK 0225

Hon'ble Judges : R.P. Sondurbaldota, J

Bench : Single Bench

Advocate : Sandesh D. Patil, for the Appellant

Final Decision : Allowed

Judgement

R.P. Sondurbaldota, J—The above two Second Appeals are being disposed off by a common order as the substantial questions of law arising therein are same.

2. Respondents no. 1 and 2 had filed two suits being Regular Civil Suit No. 329 of 1975 and Regular Civil Suit No. 338 of 1979 against the appellant and other respondents. Both the suits were dismissed by the trial Court by separate judgments and orders passed on the same day i.e. 12th October, 1981. Being aggrieved by the order of dismissal, respondents no. 1 and 2 preferred Reg. Civil Appeal No. 397 of 1982 from the first suit and Regular Civil Appeal No. 434 of 1982 from the second suit to the District Court. The appeals were disposed off by the District Court by the common judgment and order dated 31st December, 1992. The District Court, reversed the decisions of the trial Court and decreed the suit leading to the present Second Appeals.

3. The appellant herein is defendant no. 1 to the first suit and defendant no. 2 to the second suit. He shall, hereinafter, be referred to as the defendant, he being the contesting defendant. The other contesting defendant is the State of Maharashtra. Respondents no. 1 and 2 as the plaintiffs.

4. The two appeals were admitted on 8th March, 1994 and 31st March, 1994 respectively with a direction for expeditious hearing. The appeals, however, could not reach for hearing for 21 long years thereafter. In the month of February, 2015 extensive submissions, of both the sides, were heard on the substantial questions of law raised in the memo of appeals and they were posted for judgment. Only, thereafter it was noticed that the orders of admission of the appeals do not frame substantial questions of law to be considered by the Court and the parties were unaware of this fact. Therefore, the appeals were placed on the board for the purpose of formulating for record, the questions of law on which the hearing had taken place.

5. Mr. Anilkumar Patil, the learned Advocate for the plaintiffs raised objections for framing of questions of law at this stage of the appeals. The objections raised by him were twofold. His first argument was that the orders of admission of the appeals without framing substantial questions of law arising in the appeals for consideration of the Court are no orders of admission. Consequently, the appeals need to be heard for admission afresh and cannot be disposed off finally on the basis of the arguments advanced. His second argument is that, since in the meantime, the assignment of this Bench has changed, it cannot take up the appeals for admission and the appeals must be sent to the Bench whose regular assignment is of Second Appeals.

6. Mr. Sandesh Patil, the learned Advocate for the defendant submits in reply that, the objections raised by the plaintiffs and the course of action suggested is neither supported nor required by the law. Besides such course of action would amount to travesty of justice.

7. Mr. Anilkumar Patil, refers to the decision of the Apex Court in Umerkhan Vs. Bismillabi @ Babulal Shaikh and Others, AIR 2012 SC 1646 : (2011) 12 JT 1 : (2011) 3 RCR(Civil) 872 : (2011) 8 SCALE 85 : (2011) 9 SCC 684 : (2011) 9 SCR 551 : (2012) AIRSCW 2269 : (2011) 5 Supreme 542 , to submit that formulation of a substantial question of law is a sine qua non for exercise by the Court of jurisdiction under Section 100 Civil Procedure Code ("CPC" for short). He also refers to Section 100(5) of CPC to submit that the language of the provision is a clear indication that unless the order of admission formulates substantial question of law, the Second Appeal cannot proceed for final hearing.

8. Section 100(5) CPC states that, the appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. This provision cannot be read in isolation. Section 100 must be read in it's entirety including the proviso thereto. Firstly, Section 100 by itself does not contemplate two stages of the Second appeal i.e. admission and final hearing. The essence of the provision is that, an appeal to the High Court from every decree passed in appeal by the subordinate Court shall lie only in the cases involving substantial question of law. If it is satisfied that the case involves such question of law, it shall formulate that question and hear the appeal on the question. The proviso to the Section clarifies

that nothing in sub-section 5 takes away the power of the Court to hear, for the reasons to be recorded, the appeal on any other substantial question of law not formulated by it. As regards the decision cited, the facts therein were such that, the Second Appeal had been decided not on any substantial question of law but generally on its merit. The Apex Court, therefore held that the appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code. It is restricted to such substantial question of law that may arise from the judgment and decree appealed against. The Apex Court proceeded to observe that, as a matter of law, a Second Appeal is entertainable by a High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. It is, however, open to the High Court to re-frame substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved, at the time of hearing of the Second Appeal, but reversal of the judgment and decree passed in appeal by a Court subordinate to it in exercise of jurisdiction under Section 100 of the Code, is impermissible without formulating substantial question of law and a decision on such question.

9. In the case on hand, the arguments advanced on behalf of the appellant were specifically on the substantial questions of law raised in the grounds enumerated in the memo of appeal. The submissions in reply, of Mr. Anilkumar Patil were on the very questions of law. Thus, during the course of the arguments the questions of law being agitated before the Court were specific and clear to both the sides. Therefore, the decision relied upon by Mr. Anilkumar Patil, has no applicability to the facts of the present case. So long as the essence of Section 100 CPC of restricted consideration of the challenge to the appellate decree by the High Court as provided therein is unaffected and the principles of natural justice are adhered to, any procedural lapse which does not cause prejudice will have to be ignored. One cannot forget that the rules of procedure are meant for doing justice. A hypertechnical approach towards the rules of procedure may result into denial of justice in true sense of the term.

10. The above view is supported by the decisions of the Apex Court cited by Mr. Sandesh Patil. He submits that non-formulation of substantial question of law at the stage of admission cannot be fatal to the order of admission of the appeal. In any case, Section 100 itself provides that substantial question of law can be formulated at a subsequent stage and in some exceptional cases even at the time of arguments. He further submits that the plaintiffs cannot be allowed to raise a grievance about non-formulation of substantial question of law at the stage of admission, unless they establish show that such omission has caused prejudice to them. In this connection, Mr. Patil relies upon two decisions of the Apex Court in (i) *Arsad Sk. and Another Vs. Bani Prosanna Kundu and Others*, (2014) AIRSCW 2631 : (2014) 5 SCALE 495 and (ii) *Kannan (dead) by Lrs. and Others Vs. V.S. Pandurangam (dead) by Lrs. and Others*, AIR 2008 SC 951 : (2007) 13 JT 523 : (2007) 3 SCALE 511 : (2007) 12 SCR 591 . In both the decisions cited, the Second Appeals had been decided without framing

substantial questions of law and the orders had been carried to the Apex Court with that grievance. In *Arsad Sk's* case, the Apex Court observed that, the general rule regarding an appeal under Section 100 of CPC is that the jurisdiction of the High Court is limited to the substantial question of law framed at the time of admission of the appeal or at a subsequent later stage, if the High Court is satisfied that such substantial question of law arises from the facts found by the Courts below. Any lapse in adhering to the procedure on this count requires that the Counsel for the parties should have pointed out the same at that stage only. Moreover, it was clear that the High Court had basically framed the substantial question of law though at a later stage. Besides, it is well accepted principle that rules of procedure being a handmaiden of justice, the omission of the Court in formulating the question of law while admitting the appeal does not preclude the same from being heard as litigant should not be penalised for the omission of the Court. It further held that the judgment of the High Court should not be set aside on the ground of non-compliance of Section 4 of Section 100, if no prejudice has been caused to the parties by not formulating such substantial question of law.

11. The same view has been expressed in the decision in *Kannan's* case wherein the Apex Court observes :

"8. It is true that in this case no substantial question of law has been formulated by the High Court. However, in our opinion, merely because no substantial question of law has been formulated by the High Court that does not mean that the judgment of the High Court automatically becomes a nullity or that it must necessarily be set aside by this Court on that ground alone. The appellant before us must also show prejudice to him on this account."

12. In view of the above, there can be no substance in the submission advanced by Mr. Anilkumar Patil on non-formulation of substantial question of law at the time of admission of the appeal.

13. The following questions of law arising from the findings of the Courts below on which submissions have been advanced are now formulated as substantial questions of law, arising in the appeals.

"1. Whether the suit of the Plaintiff was barred by limitation ?

2. Whether the finding of the Lower Appellate Court that boundaries and description of the property mentioned in Sale Deed at "Exhibit 40" and "Exhibit 95" tally with descriptions of suit open space, i.e. C.T.S. No. 8990 is perverse ?

3. What is the effect of dismissal of appeals before the Superintendent of Land Records and Director of Land Records respectively ?

4. Whether presumption under Section 90 of the Evidence Act as regards the ancient document is extended to correctness of every statement contained therein ?

5. Whether the principle that boundaries shall prevail over the area can be

applied in facts and circumstances of the case precisely because in the case in hand neither area, nor boundaries are mentioned in the Sale Deed ?

14. REGULAR CIVIL SUIT NO. 329 OF 1975 :

Plaintiff no. 1 filed this suit on 10th November, 1975 seeking, inter-alia, permanent injunction to restrain the defendant from (i)carrying out any construction (ii)taking any electricity or water connection, (iii)constructing steps, (iv)opening window (v) constructing balcony and releasing water over the suit property i.e. the land at C.T.S. No. 8990 situate at Miraj City and to restrain the other defendants from granting permission to the defendant for the above acts. The other defendants to the suit are Miraj Municipal Council and the Miraj Electric Supply Company. Plaintiff no. 1 also sought a mandatory order directing the defendant to remove the heap of soil at the site of the second suit property i.e. the open land at C.T.S. No. 1428. Plaintiff no. 1 claimed to have become owner of the two properties vide deed of conveyance dated 8th April, 1914. But at the same time, plaintiff no. 1 also mentioned that the record of rights shows, the State of Maharashtra, as the owner of the first suit property.

15. REGULAR CIVIL SUIT NO. 338 OF 1979 :

Four years after the first suit i.e. on 3rd August, 1979 the plaintiffs filed this second suit for a declaration that they are the owners of the open land at C.T.S. No. 8990 and for a direction to the State Government to correct the record of rights. The other defendants to the suit were the State of Maharashtra and the owner for the adjoining land at C.S. No. 8991.

16. The defendant is admittedly the owner of the land at C.T.S. No. 1427. He contested both the suits alongwith the State of Maharashtra and Miraj Municipal Council. All the parties disputed the claim of title of the plaintiffs to C.T.S. No. 8990. They also contended that the second suit was barred by the law of limitation and that the description of the two properties stated in the plaint were not correct. Miraj Municipal Council contended that the permission for building construction granted by it to the defendant was after due verification of the documents of title of the defendant.

17. The evidence recorded, was common to the two suits. The plaintiffs examined plaintiff no. 2 and two witnesses, Yashwant Jadhav P.W.2 and Gurappa Dere, P.W. 3. None of the defendants led any evidence. The first suit which was for injunction simplicitor was dismissed by the trial Court with findings that the plaintiffs had failed to establish title to C.T.S. No. 8990 and C.T.S. No. 1428 and also that the defendant was obstructing the plaintiff's enjoyment of the suit property as alleged. It also held that, the defendant had established that the land at C.T.S. No. 8990 was being used by him as a by-lane for 40 years. The second suit was dismissed with the same finding as regards the title to C.T.S. No. 8990. The trial Court further held that the land at C.T.S. No. 8990 was common to the defendants who had been using it by way of an access and that the plaintiffs had failed to establish that they were in possession of the suit property. The issue of

limitation, however, was answered in favour of the plaintiff. While allowing the appeals preferred by the plaintiffs against the decree of dismissal, the District Court reversed the findings of the trial Court on the title and possession of the suit property by the plaintiffs. It further held that the defendant had failed to establish that C.T.S No. 8990 is a common property and that he has been in its enjoyment for his access to the property. This common order is impugned in the present appeals that are to be decided on the questions of law enumerated above.

18. The first question is of bar of limitation. The facts relevant for the purpose pleaded in the plaint are that, the lands at C.T.S. No. 1428, 8992 and 1430 were purchased by the husband of plaintiff no. 1 by the sale-deed dated 13th October, 1913. On the death of her husband, plaintiff no. 1 became the owner of the said properties. By the deed of adoption dated 20th August, 1930 plaintiff no. 1 adopted plaintiff no. 2. The deed of adoption also refers to the two properties by their description. The plaintiffs allege that, prior to the survey of the lands, conducted by the Government, the land at C.T.S. No. 1430 was numbered as M.C. No. 5138 and the land at C.T.S. No. 8990 carried M.C. No. 5138. On 6th November, 1942 plaintiff no. 1 was granted sanad for CTS No. 1430 which stated the area of the land as 925 sq.ft. But later the area was shown reduced to 214 sq.ft. The balance area of 711 sq.ft. was given a separate number i.e. C.T.S. No. 8990. On 16th November, 1971 the land at CTS No. 8990 was treated as the government land with the occupants of the land at C.T.S. No. 1427 to 1430 having easementary right of way/access over it. Plaintiff no. 1 had filed an appeal against the order dated 16th November, 1971 to the Superintendent of Land Records. That appeal was dismissed by the order dated 26th September, 1978. According to the plaintiffs, the cause of action for them to file the suit for declaration of their right to the land at C.T.S. No. 8990 arose for the first time on 26th September, 1978. Therefore, the suit filed on 3rd August, 1979 was within the period of limitation.

19. The trial Court, for deciding the issue of limitation simply accepted the case of the plaintiffs. It held that, the suit of the plaintiffs being simplicitor for declaration of title without seeking possession was governed by Article 113 of the Limitation Act, which provides period of limitation of 3 years from the date on which the right to sue accrued. The right of the plaintiffs was finally rejected by C.T.S. Office on 26th September, 1978 and hence, the suit filed was within the period of limitation. The trial Court did not discuss any of the necessary details of the question of limitation i.e. neither justification for the provision of law made applicable nor the date on which the cause of action to file the suit arose nor the date from which the period of limitation started running for the plaintiffs.

20. The order of the Appellate Court is equally cryptic and vague. It deals with the question in following words.

"16. Now on the point of limitation the submission of Learned Counsel Shri. D.V. Navare, for respondent Chougule, the suit is time barred, does not stand to the

reason. The proposition laid down in the case of Bai Manchha and Others Vs. Sardar Sajjadanashin Saiyad Mahamad Baker-el-Edrus, AIR 1963 Guj 168 : (1963) GLR 545 is of no help. Admittedly, on 26.9.1978 the Appellate Authority of City Survey rejected the appeal and suit is filed for declaration in the year 1979. So, considering period of three years for seeking suit is within limitation."

21. Mr. Sandesh Patil, the learned Advocate appearing for the defendant submits that, both the Courts below erred in dismissing the issue of jurisdiction in such casual manner. He argues that, it was necessary for them to first determine from the facts, the date on which the cause of action to file the suit arose and the date on which the prescribed period of limitation started running. Mr. Pramod Patil, learned Advocate appearing for the plaintiffs submits, per-contra, that both the dates being obvious from the facts of the case, did not require any elaboration.

22. The Courts below clearly erred in not deciding the issue of limitation properly. The order of the lower Appellate Court is worse. It merely refers to the citation relied upon by the defendant without noting the proposition of law laid down therein and without demonstrating as to why the same is not attracted to the facts of the case.

23. The Schedule to the Limitation Act prescribes periods of limitation for different types of proceedings. It contains three Divisions. The First Division provides for suits, the Second Division provides for appeals and the Third Division provides for Applications. The First Division is divided into ten Parts, each part governing a specific class of suits. The parts relevant for the present purposes are Part-III and Part-X. They provide for "Suits Relating to Declarations" and "Suit for which there is no prescribed period" respectively. Part-X is the residuary provision for the entire First Division and consists of only one article i.e. article 113. Part-III consists of three articles. The first two articles provide for suit for declaration for forgery of an instrument and suit for declaration of invalidity of adoption. The third article i.e. article 58 is the residuary article i.e. for any other declaration. The two articles relevant for present purposes are reproduced below : -

24. The suit filed by the plaintiffs being a declaratory suit will be covered by Part-III of the First Division of the Schedule. Further, since it is not the type of suit described in the first two articles therein, it would be governed by the third article, the residuary article for Part-III. In this manner, it is provided for in the First Division and hence will not be governed by Part-X which comes into operation only when no provision whatsoever is made for a suit in the First Division. Therefore, the application by the Courts below of Article 113 to the suit was not correct. Article 58 and Article 113 quoted above, may appear to be similar but are in fact dissimilar. The difference therein lies in the starting point of the period of limitation. Article 58 unlike article 113 qualifies the time from which the period of limitation begins to run by the word "first". Therefore, the plaintiffs were required to file the suit within three years from the date on which the right to file the suit first accrued to them.

25. In the circumstances, the next enquiry would be into the date on which the right to file the suit first accrued to the plaintiffs. As per the record, the City Survey Enquiry treated the land at C.T.S. No. 8990 as government property in the year 1959. That means, the status of the plaintiffs was first denied in the year 1959. This fact was clearly known to plaintiff no. 1 as she had applied to the City Survey Officer for correction of the land records. The date of that application is not disclosed anywhere. But the application was rejected on 14th November, 1971. It can therefore be conveniently and safely inferred that the date of knowledge of denial of title by plaintiff no. 1 fell between the date of change in the City Survey Records in the year 1959 and the date of filing of the application for change in the City Survey Records. The period of limitation of three years therefore started running from that date. However that date has not been disclosed anywhere on record. The only earliest date known is of dismissal of the application for change in the revenue records which is 14th November, 1971. Since the date of knowledge was obviously prior to that date even if that date is taken as the date on which the right to file suit for declaration of the title first accrued to the plaintiffs the suit filed in the year 1979 would be barred by the law of limitation. Any further challenge to the change of City Survey records does not save the period of limitation. The date of dismissal of further challenge can not be the date on which the right to sue first accrued to the plaintiffs. Therefore, the suit filed beyond three years from 14th November, 1971 was barred by the limitation. Consequently the first substantial question of law is answered in the affirmative.

26. The next consideration would be of the substantial questions of law relating to the description of the suit property at C.T.S. No. 8990. According to the defendant, the description stated, in the document of title of the plaintiffs, of the property transferred, is firstly vague and secondly does not, in any way, indicate that C.T.S No. 8990 formed part of it.

27. The plaint describes C.T.S. No. 8990 as admeasuring 732 sq.ft. with its boundaries as below :-

"East :-Gadgil road.

South :-Building at C.T.S. No. 1426 constructed by Koparde and open land at C.T.S. No. 1427 purchased by Changule.

West :-Land at C.T.S. No. 8992 belonging to Mahadeo Hone and C.T.S. No. 1423 of Ghanashyam Hone.

North :-C.T.S. No. 8991 belonging to Amirbi, House at C.T.S. No. 1429, C.T.S. No. 8989 in common occupation of Amirbi and Mahadeo Hone and C.T.S. No. 1430 of Kashibai Hone."

28. The description of C.T.S. No. 8990 as contended by the State of Maharashtra at para-3 of its written statement is :-

"To the east road.

To the West CTS No. 1432, 8992.

To the north CTS 8991, 1428, 8989 and 1430.

To the south CTS 1427, 1426."

According to the State in the City Survey enquiry, of the year 1935 the properties of the plaintiff were given C.T.S. No. 1428 and 1430. The land at C.T.S. No. 8990 was not included in C.T.S. No. 1430. However, the area of C.T.S No. 1430 was wrongly shown to be 925 sq.ft. This mistake was rectified by the City Survey Office in the year 1959 and the area of C.T.S No. 1430 was shown as 214 sq.ft.

29. The defendant also alleged in his written statement that, the land at C.T.S. No. 8990 was never included in C.T.S. No. 1430. C.T.S. No. 8990 was always a common lane used by the defendant jointly with others. Further, the description of C.T.S. No. 8990 as stated in the plaint is not correct and it does not tally with the description of land in the sale-deed dated 8th April, 2014.

30. The description of the properties purchased by the husband of plaintiff no. 1 by the sale-deed dated 8th April, 2014 read as follows :-

"1) Structures bearing Committee no. 4637 and 4638 alongwith open space of 2 Khans with boundaries as follows :-

East - Public road.

West - Properties of Ghanashyam and Appayya Jurebatti.

South - House property of Shivangi.

North - House property of Ghanashyam.

(ii). Structures bearing Prata Committee no. 4636/A alongwith apartment land with boundaries :

East - Public Road

West - House property of Guddu Musalman.

South - House property of Laxman Niravi.

North - House property of Ghanashyam.

The document does not specify the area of the two properties. It also does not state the house number or the property number of the adjoining properties.

31. In the above facts of the case, it was necessary for the plaintiffs to establish that the property as described in the plaint is same as C.T.S. No. 8990. Further, it earlier formed part of C.T.S. No. 1430. Next C.T.S. No. 1430 is the same property as described in their deed of conveyance and hence they are it's owners.

32. The evidence led on behalf of the plaintiffs is essentially of plaintiff no. 2. The two witnesses examined by the plaintiffs do not throw any light on the title or

identification of the suit property. Their short evidence refers to only existence of two stone pillars, an earthen pot and Neem tree at the suit property. The cross-examination of these two witnesses shows that they are ignorant of all the material facts of the case. Therefore, the only witness whose evidence is material for consideration is plaintiff no. 2 who is the adopted son of plaintiff no. 1.

33. It is the case of the plaintiffs that, the area of C.T.S. No. 1430 was of 925 sq. ft. which is now shown as reduced to 214 sq.ft. The plaintiffs neither plead nor establish the location of reduction. There is no explanation for the difference in the description of the boundaries of the property purchased by father of plaintiff no. 2 in the year 1914 and the boundaries of C.T.S. No. 8990 and the boundaries stated in the plaint. The trial Court, at paras-12 to 15 of its judgment, has extensively considered the entire evidence on record to note that the map on the reverse of the sanad in favour of plaintiff no. 1 does not indicate that the land at C.T.S. No. 8990 was part and parcel of C.T.S. No. 1430. Though the area of C.T.S. No. 1430 as mentioned earlier was 925 sq.ft. the title deed of the plaintiffs does not show that C.T.S. No. 8990 was its part. The adoption deed, not being a document of title was of no assistance to the plaintiffs to establish their title to the suit property.

34. Mr. Sandesh Patil, submits that the judgment of the lower appellate Court is replete with perversities. He points out that it incorrectly records the pleadings of the parties and observations of the trial Court to arrive at the conclusion drawn by it.

35. At para-17 of the impugned judgment, the Lower Appellate Court notes,

"so in the light of this pleading, plaintiff and defendant no. 2 both are claiming this disputed site. One as exclusive owner and other as joint owner. Moreover, in para 11 of W.S. Rights of Municipality are agitated contending possession is with Municipality."

The premise noted is entirely incorrect. It is not the case of the defendants anywhere that the defendant (defendant no. 2) claims any title to C.T.S. No. 8990, much less, joint ownership. According to them, C.T.S. No. 8990 is the property of the State Government and it is a lane available for all to use. Municipal Council (Municipality) also does not agitate it's possession over the land. Thus the premise on the basis of which the lower Appellate Court has considered the evidence is incorrect.

36. In order to disbelieve the claim of the defendants that the land at C.T.S. No. 8990 is in fact a lane the lower Appellate Court notes that, "the fact, the defendant Chougule has way or access to his C.T.S. No. 1427 on southern side, is not at all controverted either in the pleading or denied on oath by leading evidence." The fact of existence of an access from the southern side for the defendant can be of no relevance since the dispute is not about the access for the defendant to his property but is of the title claimed by the plaintiffs to C.T.S. No. 8990 which the defendant claims to be using as an access. The document of

title of the defendant, specifically refers to existence of the road on the northern side. This aspect has not been considered by the lower Appellate Court.

37. At para-17 of the judgment, the lower Appellate Court incorrectly observes that, the trial Court has concluded that the boundaries stated in the sale-deed of the plaintiff tally with the open space in question (C.T.S. No. 8990). It then observes that, the trial Court after drawing conclusion that the boundaries tally, has changed it's mind at para-15 of the judgment to hold that, it cannot be said that the property at C.T.S No. 8990 was also sold to the husband of plaintiff no. 1. As has been rightly pointed out by Mr. Sandesh Patil, there is no conclusion drawn by the trial Court that boundaries and description of the property mentioned in the sale-deed tally with the description and boundaries of C.T.S No. 8990. The trial Court had merely, at para-11 of its judgment, recorded the argument so advanced by the advocate for the plaintiffs. Therefore, there was no question of the trial Court changing its mind subsequently.

38. The lower Appellate Court refers to the contents of the sale-deed wherein it is stated that the property sold consisted of building of 2 Khans and a courtyard and to conclude that the open space referred to therein must have been subsequently given a separate C.T.S. No. 8990 which was part and parcel of C.T.S. No. 1490. The conclusion drawn is clearly nothing but a conjecture and surmise. It will have to be treated as perverse.

39. The yet another reason stated by the lower Appellate Court is that for carving out new C.T.S. No. 8990 the State of Maharashtra has not given any explanation. It further holds that, infact as per the extract of enquiry the site was shown to have been claimed by Mahadev Ishwar Done and Amirbi, who had failed to prove the title, to declare that the site vested with the Government. Thereafter, the Enquiry Officer on his own accord observed that there was easement of way over the land for the holders of C.T.S. No. 1472, and C.T.S. No. 1423 on the site. According to the lower appellate Court, this observation of the Enquiry Officer was totally incorrect. But no reason has been given for this finding. The lower appellate Court, obviously lost sight of the case of the defendants that, the Sanad issued to plaintiff no. 1 in respect of C.T.S. No. 1430 wrongly stated the area of the property as 925 sq.ft. This mistake was later rectified by City Survey Officer in the year 1959. Thus, there is no special carving out of CTS No. 8990 but correction of the City Survey Record as regards the area of CTS No. 1430 from 925 sq.ft. to 214 sq.ft.

40. The lower Appellate Court has next found fault with the trial Court in raising an unnecessary doubt as regards the pencil entry of area on the sanad to discard the case of the State Government as regards the title to C.T.S. No. 8990. It has also relied upon the deed of adoption relating to plaintiff no. 2 as being sufficient to support the case of the plaintiffs. According to it, though the adoption deed cannot be a document of title, it is useful as a circumstance to establish possession and title of the plaintiffs over C.T.S. No. 8990. Unfortunately, nowhere, in its judgment the lower Appellate Court has considered the aspect of

the discrepancy in the description and the boundaries of the properties and the lack of the explanation by the plaintiffs for the discrepancy. In all the above circumstances, the second substantial question of law must be answered in the affirmative.

41. The lower Appellate Court holds that, the proposition that the boundaries shall prevail when there is dispute as regards the area sold and when there are no dimensions given. As has been rightly submitted by Mr. Sandesh Patil, in the absence of sufficient details in the sale-deed of the plaintiffs for identifying the property purchased by them the principal that boundaries shall prevail over the area cannot be applied.

42. The third substantial question of law is of the effect of dismissal of the appeals before the Superintendent of Land Records and Director of Land Records. The lower appellate Court, has not considered the effect at all. The dismissal of the appeals has been after due enquiry into the claims made by the parties. There is nothing on record to even suggest that there is any kind of defect in the enquiry. In the absence of such material the lower appellate Court ought to have accepted the decision of the revenue authorities which are given after much wider consideration. In any case pursuant to the consent order dated 15th July, 1993 passed by this Court, report from the City Survey Office, Miraj as regards the title in respect of C.T.S No. 1426, 1427, 1428, 1429, 1430 and C.T.S. No. 8989, 8990, 8991 and 8993 on the basis of the property record was called. In compliance of the order, the City Survey Officer, Miraj has submitted his exhaustive report dated 18th November, 1993. The report gives details of transfer of the properties in respect of each C.T.S. mentioned above, right from the year 1928 and confirms that the land at C.T.S. No. 8990 was never part of C.T.S. No. 1430 and that the land belongs to the Government. It also refers to the decision of the Superintendent of Land Records and Director of Land Records on the appeals preferred by the plaintiffs. Both the authorities have held that, the documents of title of the plaintiffs do not establish the right to the land at C.T.S. No. 8990. It was necessary for the lower Appellate Court to give a clear finding for the reasons stated that the conclusion drawn by two authorities was not correct. Until, it has been so established the conclusions drawn by the authorities cannot be ignored. It is to be noted that, the plaintiffs in their pleadings have not raised any ground of challenge to the reasonings for dismissal of the appeals. Since the two authorities deciding the appeal are the authorities under the Land Revenue Code, their decisions in the appeals could not have been ignored in a casual manner by the lower Appellate Court. The question is answered accordingly.

43. It was contended on behalf of the defendants that the document relied upon by the plaintiffs i.e. the deed of conveyance dated 8th April, 2014 has not been duly proved by them and hence could not be read in evidence. This objection has been dealt with by the lower Appellate Court in the following manner :-

".The submission was made on behalf of the respondent defendant Chougule the

sale deed is not proved. Admittedly, document is old more than 30 years old. The presumption of its genuineness can be drawn under section 90 of the Indian Evidence Act. Moreover, the defendant referred plaintiff this document in cross-examination. So, it can be read in evidence. In para-7, it is put to the plaintiff by defendant no. 2 Chougule, he admits.

"It is true that the contents of my sale deed (Exh. 95) dt. 9.4.1914 that there is a public lane to the east side of the CTS No. 1428 are correct."

Mr. Sandesh Patil, submits that the presumption of genuineness under Section 90 of the Indian Evidence Act is limited to the existence of the document and it does not extend to its contents. Mr. Anilkumar Patil, submits, per-contra, supports the view taken by the lower Appellate Court. He submits that the admission by the defendant in the cross-examination is sufficient proof of the contents of the document.

44. It is well established position in law that, the presumption under Section 90 of the Indian Evidence Act relates to only the signature, execution or attestation of a document i.e. to the genuineness of these three aspects. It does not extend to correctness of every statement made in the document or the truth of its contents or the fact that it has been acted upon. That must be proved like any other fact. In the circumstances, the lower Appellate Court was not right in holding that the presumption of its genuineness can be drawn under Section 90 of the Indian Evidence Act. As regards the admission quoted above in the impugned judgment, the same can be said to be admission of only existence of public lane to the east side of C.T.S. No. 1428 and not to the contents of the entire document. Since, it is the case of the defendant that, the lane at C.T.S. No. 8990 is used as a lane by him and others, the admission of existence of public lane, will have to be taken as lane at C.T.S. No. 8990. Therefore, the fourth substantial question of law is answered in the negative. In all the above circumstances, the appeals are allowed. The order dated 31st December, 1992 passed by the IIInd Additional District Judge, Sangli is set aside.

45. At the request of Mr. Anilkumar Patil, the interim order of appeal passed in the appeal, is extended for a period of 6 weeks from today.