

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO.3958 OF 2013
[Arising out of Special Leave Petition (Civil)
No.31353 of 2009]**

SHAKUNTALABAI & ANR. ...APPELLANTS

VERSUS

NANAJI DEWAJI WADASKAR ...RESPONDENT

ORDER

Delay condoned in application for restoration of special leave petition qua respondent Nos. 1 and 3.

For the reasons stated in the application, it is allowed and the special leave petition is restored qua respondent Nos. 1 and 3.

Leave granted.

The impugned order has been passed by the High Court assuming that the appeal before the High Court was a Second Appeal. This is patent from the judgment itself which mentions that the decision is rendered in Second Appeal No.339 of 2009.

It has been pointed out by the learned counsel for the appellants that, in fact, the Court was seized only of the First Appeal. This submission of the learned counsel is borne out from the grounds of appeal submitted before the High Court which mention First Appeal No.339 of 2009.

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A perusal of the judgment passed by the High Court shows that none of the submissions made by the appellants before the High Court have been considered. Furthermore, the judgment does not indicate the reasons for the conclusions recorded in the judgment.

In view of the above, the judgment of the High Court is not sustainable. The appeal is allowed. The impugned judgment of the High Court is set aside. The matter is remanded back to the High Court for a decision on merits after giving due opportunity of hearing to all the parties.

No costs.

....., J.
(SURINDER SINGH NIJJAR)

....., J.
(PINAKE CHANDRA GHOSE)

NEW DELHI
APRIL 22, 2013