

Shailaja

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

SECOND APPEAL NO.116 OF 1999

a/w

CIVIL APPLICATION NO.4231 OF 1999

IN

SECOND APPEAL NO.116 OF 1999

Anant Ramchandra Kambali	]	
residing at Kankavali	]	
Taluka Kankavali	]	
District Sindhudurga	]	Appellant
		(Original Defendant)

Vs.

1. Shri Dipak Bhargav Bhosale	]	
age about 25 years	]	
2. Gautam Bhargav Bhosale	]	
age about 23 years,	]	
3. Mangesh Bhargav Bhosale	]	
age about 38 years	]	
4. Sunanda Bhargav Bhosale	]	
age about 38 years,	]	
occupation household and	]	
agriculturist,	]	
5. Bhargav Deoo Bhosale	]	
age about 43 years,	]	
all residing at Kankavali	]	
Taluka Kankavali,	]	
District Sindhudurga.	]	Respondents
		(Orig. Plffs 1 to 4 and Deft No.2)

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Mr. G.H. Keluskar, for Appellant.

Mr. A.S. Khandeparkar, Senior Advocate a/w Mr. Rohit Mahadik,
for Respondents.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 21st JUNE, 2024.
PRONOUNVRF ON : 1st JULY, 2024.

JUDGMENT:

1. On 8th March, 2000, Second Appeal came to be admitted on the following substantial question of law;

“Whether “**Exhibit 43**” is a Sale Deed or an agreement for sale?”

2. I heard learned Counsel for the appellant and learned Senior Counsel for the respondents.

3. The respondents herein are the original plaintiffs who filed Regular Civil Suit No.28 of 1985 in the Court Civil Judge, *Kankavali* at *Kankavli* against the appellant and Bhargav Deu Bhosale (Defendant No.2 in the suit) for perpetual injunction restraining the appellant from interfering with the alleged peaceful possession of the land described in the plaint.

4. It has been averred in the plaint by respondents No.1 to 4 that the suit lands were ancestral properties of the respondents and the appellant has no right, title or interest in respect of the suit land. It has been further averred that the appellant had got the document in question executed from respondent No.5 by taking undue advantage of his mental condition.

5. In the written statement, the appellant denied all the averments and has specifically contended that he had purchased only parcel of land described at Sr. No.6 in para 1 of the plaint i.e Survey No.12/38 (for short “suit land”) under the agreement dated 29th December, 1973 from respondent No.5. It is the case of the appellant that he has been in possession of the suit land under the agreement of sale.

6. After framing necessary issues and evaluating the evidence adduced on behalf of the appellant, learned Civil Judge, Junior Division, *Kankavali* by the judgment and order dated 17th November, 1998 dismissed the suit by rendering the findings that the document in question was a document of sale of the suit land, meaning thereby, it was not an agreement of sale but a final sale deed in respect of the suit land.

7. Aggrieved by the decision of the Trial Court, respondents No.1 to 4 preferred an appeal in the Court of District Judge bearing No.3 of 1989. Upon hearing the respective sides, the learned Additional District Judge reversed the decision of the Trial Court in terms of judgment and order dated 17th December, 1998.

8. The appellant – original defendant No.1, therefore, approached this Court by way of Second Appeal.

9. The focal point of the Second Appeal is the document in question viz Exhibit 43 on the basis of which, my learned predecessor framed the aforesaid substantial question of law.

10. Learned Counsel for the appellant – original defendant No.1, at the outset, would argue that document Exhibit 43 is in respect of out and out sale of the suit property, meaning thereby, it is a sale deed and not an agreement of sale which is apparent from the language and recital used in the said document. Learned Counsel is justified in contending that there is no specific prayer in the plaint claiming possession of the suit land which impliedly means that the possession has been with defendant No.1 himself at the time of

execution. It would be advantageous to reproduce the recitals of the said document dated 29th December, 1973 between appellant – original defendant No.1 and the respondents-plaintiffs:

“येणेप्रमाणे मिळकत पोट खराबा सह व त्यातील झाड झाडोरा पाट पाणी कवळ गवत वगैरेसह दरोबस्त मिळकत ही आमचे मालकीची असोन ही जमिन तुमचेकडे वहिवाटीत आहे. सबब ही मिळकत तुम्ही आमचेकडे कायम खरेदी मागितल्यावरून ती तुम्हांस खरेदी देण्याची ठरवून तिची किंमत तुमचे आमचे आपसांतील समजूतीने रुपये चाळीस ठरविली आहे. ही रक्कम मला आज रोजी रोख पोच आहे. सबब अलाहिदा पावतीचे कारण नाही. याप्रमाणे चालत असलेला तुमचा कब्जा या कराराने मालक म्हणून कायम केला आहे. आता या मिळकतीवर माझा अगर माझे वारस अगर भाउबंद अगर हिस्सेदार यांचा कोणत्याही प्रकारे हक्क, संबंध राहिलेला नाही. तशी कोणाची हरकत असल्यास ती मी माझे खर्चाने दूर करून देईन. ही मिळकत खरेदी खत स्वतंत्र करून दयावे लागल्यास तो मी करून देईन. आता या जमिनीचे किंमती पैकी तुमचेकडे काहीही येणे राहिलेले नाही. म्हणून हे करारपत्र स्वखुषीने लिहून दिले.

तारीख 29.12.73 लि.म.वि.ज मजकूर

रा. कल्लठ

सही / .

समक्ष,

1) दत्तात्रय जगन्नाथ माणगांवकर

सही/भार्गव देउ

भोसले

2) वसंत जानू कांबळी सही /

11. It is apparent from a bare look at the contents of the document that the suit land has been in cultivating possession of the appellant. Upon the request of the appellant, the respondents

agreed to sell the land for a consideration of Rs.40/-. Accordingly, the entire consideration of Rs.40/- had been duly received by Bhargav Bhosale i.e predecessor of the plaintiffs and thereby, confirmed the possession of the appellant over the suit land. Undisputedly and as already stated hereinabove, the suit land has been in possession of appellant – defendant No.1 and was under his cultivation. The recitals further reveal that the the vendor either himself or through his legal heirs and representatives will not have any right, title or interest in the suit land. The document appears to have been signed by two witnesses namely Dattatray Jagannath Mangaonkar and Vasant Janu Kambli.

12. Mr. Khandeparkar, learned Senior Counsel appearing for the respondents-plaintiffs vehemently argued that recitals in the **Exhibit 43** do not show that land in question was being purchased for the legal necessity and benefit of the Estate of joint family and, therefore, it cannot be said to be a document transferring right, title and interest by respondent No.5 in favour of the appellant.

13. I am afraid, I cannot subscribe to what has been argued by Mr. Khandeparkar for the simple reason that the recitals of the

document, as already stated, are quite clear and unambiguous. It is not the case of the respondents that the appellant is not in a cultivable possession of the suit land. Moreover, no evidence at all has been adduced by the respondents to substantiate the alleged fact that the document in question got executed by taking undue advantage of mental condition of respondent No.5.

14. It is pertinent to note that there are no direct allegations of fraud alleged to have been played by the appellant – original defendant No.1 upon the respondents either in the pleadings or in the evidence to substantiate the allegations that respondent No.5 was of unsound mind at the time of execution of **Exhibit 43**.

15. The learned Civil Judge, Junior Division has, therefore, legally and correctly returned his findings against the respondents – plaintiffs by holding that document **Exhibit 43** is a sale deed in respect of the suit land and not an agreement of sale. Execution of the said document has also been duly proved before the Trial Court. The Trial Court has even justified and has rightly observed that question of legal necessity could not have any significance in light of the fact that even as co-parcener, respondent No.5 had right to

alienate his share in the suit land.

16. Last but not the least, respondents – plaintiffs avoided to enter into the witness box to substantiate their case or to controvert evidence adduced by the appellant – defendant No.1.

17. Thus, answer to the substantial question of law is that document Exhibit 43 is a sale deed and not an agreement of sale. Consequently, the appeal succeeds.

18. Now, to the order.

: ORDER :

(a) The appeal is allowed.

(b) The impugned judgment and order rendered by the Additional District Judge in Civil Appeal No.3 of 1989 is quashed and set aside by restoring the judgment and decree passed by the Civil Judge (Junior Division) Kankavali in R.C.C No.28 of 1985 by which the suit was dismissed.

(c) In the circumstances, there is no order as to costs.

19. In view of disposal of the Appeal, pending application, if any, also stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]