IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 355 OF 2015

Shivaji s/o Jagannath Lambe ..... **APPELLANT**

V E R S U S

Smt.Shakuntala Dattu Choudhari ..... **RESPONDENTS**

.....

Mr. R.R.Karpe, Advocate for Appellant.

Mr. N.K.Kakade, Advocate for Respondent.

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CORAM : T.V.NALAWADE, J.

DATE : 23rd SEPTEMBER, 2015

ORDER :-

1. The Appeal is filed to challenge the Judgment and Order of R.C.S. No. 423/2007 which was pending in the Court of the Civil Judge [Jr.Division], Rahuri, district Ahmednagar and also the Judgment and Order of R.C.A. No. 328/2011 which was pending in the Court of the

District Judge – 4, Ahmednagar, district Ahmednagar.

2. Heard both sides.

3. The Suit was filed by the present respondent for redemption of mortgage and for possession in respect of agricultural land. It is the case of the respondent/plaintiff that her husband had mortgaged the suit property to defendant under mortgage document dated 27/11/2002. It is her case that period of mortgage was of 5 years and the amount of ₹ 40,000/- [Rupees Forty Thousand] was taken by her husband as loan. It is contended that the defendant was put in possession and he was to enjoy the income of the property during the period of mortgage. Her husband died before the expiry of the period. It is her case that as a heir of her husband, she is entitled to get the decree of redemption. It is her case that she had issued notice through Advocate on 11/10/2007 to ask the defendant to accept money and re-convey the property, but the defendant did not give any response.

4. The defendant contested the Suit by filing

Written Statement. He contended that the husband of plaintiff has left behind other heirs also and so the Suit filed by only one legal representative is not tenable. It is contended that, in fact, there was agreement of sale for the consideration of ₹ 1.4 Lakh between the husband of the plaintiff and the defendant. It is contended that as defendant was not having entire amount, amount of ₹ 40,000/- was paid on the date of the transaction. It is contended that the remaining amount of ₹ 1,00,000/- [Rupees One Lakh] was to be paid in instalments and accordingly the amount was paid to the husband of the plaintiff, but receipts were not issued due to cordial relations. It is contended that the husband of the plaintiff was to execute the sale deed after the payment of the entire amount, but the husband of the plaintiff died and so sale deed could not be executed.

5. Issues were framed on the basis of the aforesaid pleadings. Both the sides adduced evidence. The courts below have held that it was mortgage transaction and it was mortgage by conditional sale. The relief of redemption and possession is given by the courts below. Learned counsel for the appellant submitted that

substantial questions of law need to be formulated on following points.

i] Whether the plaintiff alone, who is one of the legal representatives of mortgagor, can file Suit for redemption ?

ii] Whether the courts below have committed error and the Judgments are perverse with regard to the construction of the document ?

6. At the out set, it needs to be observed that there is no force in the first contention as the plaintiff, the widow of the mortgagor, can file Suit for redemption and even if it is presumed that there are other legal representatives of deceased, she can represent them and can get decree of redemption.

7. Both the courts have considered the contents of the document of mortgage. It appears that when the original document must have been in custody of defendant, he did not produce the original document and so the plaintiff was required to produce certified copy of the mortgage document. The execution of the document

is duly proved. Further, the execution is not disputed by the defendant.

8. From the contents of the document, only one inference is possible that it was a mortgage transaction. Though the title of the document is conditional sale [शर्त खरेदी खत], in the body of the document there is specific mention that it was a mortgage transaction, viz. " सदर शर्त खरेदी खत हे गहाण स्वरूपी असून जमीन परत सोडवून घेण्याच्या बोलीचे आहे ".

9. The period of mortgage and mortgage money were mentioned. No other inference is possible than the inference drawn by the courts below that it was mortgage by conditional sale. There are concurrent findings of the courts below on this point. Thus, no substantial question of law can be formulated in the present matter and law is also settled on the rights of mortgagor or his legal representatives to get the relief of redemption. The defence taken by the defendant that it was agreement of sale was strange and it could not have been taken in view of the existence of a registered document.

10. In the result, present Second Appeal stands dismissed.

[T.V.NALAWADE, J.]

KNP/S.A. 355.2015