IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Second Appeal No. 238 of 2014

Sou. Kamal Madhav Choudhari,
Age : 40 years,
Occupation : Household,
R/o. Kelwad, Taluka : Rahata, .. Appellant
District : Ahmednagar. (Original plaintiff)

versus

1. Sou. Mathurabai Bhimraj Dhanwate,
   Age : 63 years,
   Occupation : Agriculture.

2. Bhausaheb Bhimaji Dhanwate,
   Age : 40 years,
   Occupation : Agriculture.

3. Bapu Bhimaji Dhanwate,
   Age : 35 years,
   Occupation : Agriculture.

   All R/o. Khadkewake,
   Taluka : Rahata,
   District : Ahmednagar.

4. Sou. Anita Annasaheb Game,
   Age : 30 years,
   Occupation : Household work.

5. Sou. Sangita Vitthal Game,
   Age : 30 years,
   Occupation : Household work,
   R/o. Kelwad, Taluka : Rahata, .. Respondents
   District : Ahmednagar. (Original defendants)

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Mr. V.R. Dhorde, Advocate, for the appellants.

Mr. C.R. Thorat, Advocate, for respondent nos.1 to 5.

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CORAM : A.V. NIRGUDE, J.

DATE : 1ST AUGUST 2015

PER COURT :

1. Heard Adv. Mr. V.R. Dhorde for the appellants, and Adv. Mr. C.R. Thorat for the respondents.

2. This Second Appeal challenges concurrent findings of the Courts below, that the respondent - defendant was entitled to redemption of mortgage and possession of the mortgaged property. The facts are quite twisted and can be shortly stated as under :-

The appellant - plaintiff filed this suit for declaration and perpetual injunction. The appellant - plaintiff took possession of the suit property from original respondent no.1, on the basis of a document which was executed in 1989, which was titled as *'mortgage with sale for five years'*. Respondent no.1 specifically mentioned in the document, that she would repay the amount of loan after five years, allow the mortgagee to take away the crop from the field and then take back possession. Somehow, respondent no.1 did not seek redemption for the next 23 years. Thereafter, however, she devised a devious scheme to deprive the appellant - plaintiff of the land. She first showed in revenue record, that she divided the land and transferred it to her two sons. A mutation to that effect was taken.

The sons, in turn, then showed that they sold the land to other respondents. The documents created then even mentioned that possession of the land was delivered to the purchasers. It is the purchasers who started pushing appellant - plaintiff from the suit land. This prompted the appellant - plaintiff to file this suit. Curiously, the appellant - plaintiff did not seek declaration of title. He sought declaration that the sale deeds executed by sons of respondent no.1 were sham, etc. In retaliation, the purchasers claimed that they are owners and had entered into the shoes of mortgagor and would claim redemption.

3. After the evidence was recorded, the Courts below concurrently held that the transaction of 1989 was that of mortgage with delivery of possession (usufructuary mortgage) and sale of the land is never of purchaser and sale deed was not sham. The suit was decreed for rememption and possession.

4. The learned Counsel for the appellant first took me through the document and the circumstance, that for next 23 years from 1989, so called mortgagor did not take any step. He, therefore, asserted that this was a clear case of out and out sale. He also asserted that though the document is titled as mortgage, the parties never intended it to be so. The conduct of the parties, according to him, clearly establish that it was a sale and not mortgage.

5. This submission is quite wishful, but law does not support this submission. A suit for redemption is permissible within 30 years as per the provisions of Limitation Act and what is stated in the document must be read literally and no hidden intention can be gathered by conduct of the

parties.

6. The learned Counsel for the appellant further asserted that in the counter claim seeking redemption, declaration of ownership of the purchasers was not sought. On the other hand, he pointed out that all throughout, the appellant - plaintiff tried and succeeded in showing that the sale deeds in favour of purchasers were sham. He said, that if they did not get ownership of the land, they would not step into the shoes of so called mortgagor.

7. This again is a wishful argument. No doubt, as said above, respondent no.1 - mortgagor devised a devious scheme, but such scheme was in fact was not necessary for seeking redemption. Respondent no.1 could have filed straightforwardly a suit for redemption and could have sought possession. Why such devious method was adopted by respondent no.1, is not a matter of enquiry here. Original mortgagor was party to the suit and she supported the case of redemption. I am afraid, both these submissions would fail to convince the Court, that there is any substantial question of law in the appeal.

8. In the result, the Appeal fails and the same is dismissed.

(A.V. NIRGUDE)
JUDGE

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