

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's orders or Registrar's	Court's or Judge's orders.
--	--	---	----------------------------

SECOND APPEAL NO. 560 OF 2012

MAHADEO MANAJI BHAWAR AND ORS
VERSUS
SITABAI RAMA BHAWAR

...
Advocate for Appellants : Mr. Ashwin V. Hon .
Advocate for Respondent: Mr. Harshad H. Padalkar.

CORAM: T. V. NALAWADE, J.
DATED: 29th SEPTEMBER, 2015.

PER COURT:

1. The appeal is filed to challenge the judgment and decree in Regular Civil Sit No.197 of 1991 which was pending before Civil Judge, Junior Division, Patoda District Beed and also judgment and order in Regular Civil Appeal No.46 of 2006 which was pending before District Judge-3, Beed. Heard learned counsel for the Appellant.

2. The suit was filed by present Appellant for the decree of reconveyance in respect of 3 agricultural lands

which are standing in the name of defendant, present Respondent.

3. It is the case of plaintiffs that plaintiff No.1 and husband of Defendant are real brothers and as plaintiff was in need of money, the amount of Rs.15,000/- was taken from the husband of defendant by plaintiff No.1 in January-February, 1992. It is contended that for the security of this money, sale deed was executed in favour of defendant but the defendant and her husband had agreed to reconvey the properties after return of money. It is contended that separate agreement to that effect was written on a stamp paper on 14th February, 1992, the date of the sale deed.

4. It is the case of plaintiffs that as plaintiffs and defendant are close relatives, no mention of Mudati, mortgage was made and no time was fixed. It is contended that in the year 1994 when plaintiff requested the defendant to reconvey the lands, initially defendant avoided and then she flatly refused to reconvey the lands. It is contended that legal notice was issued on 11th October, 1999 by the plaintiff asking the defendant

to execute such document but this notice was not replied. Relief was claimed for granting the decree of aforesaid nature.

5. The defendant filed written statement and contested the matter. She contended that under the sale deed dated 14th February, 1992 defendant purchased the suit properties and it was an out and out sale. Defendant denied that one agreement was written on a separate paper on 14th February, 1992 and defendant had agreed to reconvey the properties to the plaintiffs. It is contended by the defendant that after purchasing the land, the defendant has spent huge amount for making construction of farm house, by digging well, by installing electric motor, by laying pipeline and by planting fruit trees. It is contended that as the price of the property has increased, with alternative motive plaintiff has filed the present suit.

6. Issues were framed and both the sides gave evidence. The Courts below have held that the document of sale deed is sufficient to infer that it was an out and out sale. The Courts below have held that the

execution of the agreement dated 14th February, 1992 is not proved by the plaintiffs. The Courts below have also held that the suit was not filed within limitation as in the year 1994 itself, as per the case of the plaintiff, defendant had refused to reconvey the suit properties.

7. The sale deed, Exhibit-64, is a registered document and in the pleading itself the execution is not disputed. In view of the contents of this document which show that it was an out and out sale, it was necessary for the plaintiff to prove that there was agreement dated 14th February, 1992 under which the defendant had agreed to reconvey the suit properties. The Courts below have considered one important circumstance like notice given through Advocate by the plaintiffs. In this notice, there is specific mention that in the year 1994 plaintiffs had approached defendant and had requested to reconvey the properties but the defendant had refused to execute such document. Thus, there was refusal in respect of so called agreement in the year 1994 itself. The suit came to be filed in the year 1999. The Courts below have held that the limitation period mentioned in Article 54 of

Limitation Act is applicable and there is no error committed by the Courts below on this point. These findings are findings on facts. Though the construction of document like sale deed could have been considered but the contents of the sale deed are such that no probability is created in favour of plaintiffs that it was a transaction made for security of any loan. It was not a suit for redemption of mortgage but it was a suit for relief of decree of reconveyance. In view of this circumstance, this Court holds that no substantial question of law as such is involved in the matter.

8. In the result, appeal stands dismissed.

[T. V. NALAWADE, J.]

Dt.29/09/2015
ans/560