

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

**SECOND APPEAL NO. 731 OF 2014
WITH
CIVIL APPLICATION NO. 13155 OF 2014**

Legal Representative of Jagannath Kisan Sathe

1. Vishrantbai Jagannath Sathe,
Age : 78 years, Occ. Labourer.
2. Gulab Jagannath Sathe,
Age : 53 years, Occ. Labourer.
3. Raghunath Jagannath Sathe,
Age : 48 years, Occu. Labourer.
4. Bhujang Jagannath Sathe,
Age : 34 years, Occ. Labourer.
All R/o. Tanpurwadi, Tal. Pathardi,
Dist. Ahmednagar.

... APPELLANTS
(Orig. Defendants)

VERSUS

1. Laxman Ramnath More,
Age : 56 years, Occ. Service,
R/o. Tanpurwadi, Tal. Pathardi,
Dist. Ahmednagar.
2. Sangeeta Chhabu Sathe,
Age 39 years, Occ. Labourer,
R/o. Tanpurwadi, Tal. Pathardi,
District Ahmednagar.
3. Shobha Anna Tijore,
Age : 36 years, Occ. Labourer,
R/o. Warur, Tal. Shevgaon,
District Ahmednagar.

... RESPONDENTS
(Orig. Defendants)

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Mr A. V. Hon, Advocate for the appellants
Mr K. M. Nagarkar, Advocate for respondent No. 1 / Caveator

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CORAM : T. V. NALAWADE, J.

DATE : 30TH SEPTEMBER, 2015.

ORDER:

. The present appeal is filed to challenge the judgment and order delivered in R.C.S. No. 103 of 1989, order passed on final decree application bearing No. 1 of 2010, which was pending in the Court of Jt. Civil Judge Junior Division, Pathardi, Dist. Ahmednagar and also the judgment and order passed in R.C.A. No. 291 of 2013, which was pending in the Court of District Judge – 5, Ahmednagar.

2. Heard learned Counsels representing the respective sides.

3. Respondent No. 1 – Laxman More had filed suit against the present appellants for redemption of mortgage of agricultural land. The suit property was mortgaged by father of plaintiff in the year 1978, to defendant. Again in the year 1981, more amount was taken as loan and one document dt. 2.5.1981 was executed and it was mortgage by conditional sale that the total amount of Rs. 2500/- was taken by father of plaintiff as a loan from the defendant. It is contended that, the period of five years was mentioned in the second transaction and so after expiry of five years, it was necessary for

defendant to re-convey the property and the plaintiff was entitled to get the redemption of mortgage. It is contended that, some time was consumed as mediator tried to settle the dispute and ultimately when the defendant refused even after giving of legal notice by plaintiff, the plaintiff was required to file the suit.

4. The defendant contested the suit by taking various defences including the defence of limitation. He contended that, the first document was conditional sale deed and period of five years was given and as the amount was not repaid, the defendant became the absolute owner.

5. Both the sides adduced the evidence and on merits the suit was decreed in favour of the plaintiff – present respondent. A direction was given to the present respondent to deposit an amount of Rs. 2500/- in the Court or to be paid to defendant and direction was also given to defendant to execute the re-conveyance document in favour of the plaintiff and also to hand over the possession. The suit was decided on 17th April, 1996.

6. It appears that, the amount was deposited immediately by the decree holder. When the judgment debtor failed to execute the

reconveyance document in favour of the plaintiff, the final decree application was filed. It was however contested but, further orders were made.

7. Admittedly, no appeal was filed against the judgment and preliminary decree, when the suit was decided on 17th April, 1986. In view of this circumstances, it can be said that the R.C.A. bearing No. 291 of 2013 was filed against the order of final decree. In this regard, provision of Section 97 of Civil Procedure Code needs to be kept in mind and it runs as under :

S. 97 : *Appeal from final decree where no appeal from preliminary decree :*

Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

8. This provision shows that, the first appeal itself was not tenable. Other points are also decided against the present appellants by first appellate Court and sufficient discussion is made regarding the merits of the matter. In view of the aforesaid contentions made in the W.S., there was no other alternative before the trial Court but to give

decree of redemption of mortgage. There was compliance of order made in preliminary decree and so there is no material to formulate the substantial question of law in the present matter. In the result, the appeal stands dismissed.

9. In view of disposal of main appeal, nothing is left for consideration in the connected civil application and same stands disposed of.

[T. V. NALAWADE, J.]

sgp