

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

SECOND APPEAL No.724/2014

Damu Genu Salgar

... Appellant

V/s.

Mahadeo Pandurang Ghodake & Ors.

...Respondents

Mr. S. M. Oak with Sagar Joshi /b. Pranil Sonawane for the Appellant

CORAM: K.K. TATED, J.

DATED : SEPTEMBER 22, 2015

PC. :

1. Heard the learned counsel for the parties. This appeal is preferred by Defendant No.3 challenging the concurrent findings of facts recorded by the courts below.
2. For the sake of brevity, the parties will be referred to as per their nomenclature in the plaint/ Trial Court judgment i.e. Appellant as Defendant and the Respondent as Plaintiff.
3. The Plaintiff was in need of Rs.8000/- for the marriage of his son. Therefore, he approached Kondiba Shejal, father of Defendant for loan amount. At that time, the Plaintiff executed sale deed dated 10/01/1980 in respect of the suit land bearing gut No.143 in favour of

Kondiba, on condition that the said Kondiba would resell the suit land to the Plaintiff at any time, on receipt of the loan amount. Thereafter there was partition between Kondiba and his son i.e. Defendant No.1 and the suit land was allotted to defendant no.1 in partition. Hence, the Plaintiff approached Defendant No.1 and requested to resell the suit land to him. In the year 1985 the Plaintiff paid sum of Rs.4000/- to the Defendant. Hence, the Defendant executed the sale deed dated 20/04/1985 in respect of suit land i.e. gut No.143/2 except 41R i.e. Gut No.143/1. Thereafter the Plaintiff approached Defendant for execution of the sale deed in respect of the remaining 41R land i.e. gut No.143/1. Same was refused by the Defendant. Hence, the Plaintiff filed Regular Civil Suit No. 23/1989 in the court of Civil Judge, Junior Division, Mangalvedha for re-conveyance of the suit land bearing gut No.143/1 admeasuring 41 Rs situated at village Dhavalas, Tq. Mangalvedha. In that suit, the Trial Court framed following issues:

	ISSUES	FINDINGS
1	Does the Plaintiff prove that the sale deed in between him and Defendant No.1's father in respect of suit land is not out and out sale deed?	In the affirmative
2	Does the Plaintiff prove that the Defendant No.1's father agreed to reconvey suit land after payment of consideration amount by the Plaintiff ?	In the affirmative
3	Does the Plaintiff prove that he is ready and willing to repay the consideration amount ?	In the affirmative
4	Does the Plaintiff prove that the Defendant breached the agreement ?	In the affirmative

5	Whether suit is barred by principle of estoppel by conduct ?	In the negative
6	Does the Defendant No.2 prove that he is <i>bona fide</i> purchaser to the value without notice ?	In the negative
7	Is the Plaintiff entitled to re-conveyance ?	in the affirmative
8	Is the Plaintiff entitled to possession ?	In the affirmative
9	What order and decree	As per final order.

4. Considering the evidence on record and deposition of the parties, particularly deposition of P.W.2 Irappa Pattanshetti at Exhibit 67, the Trial Court held that the Plaintiff proved that the sale deed in between him and father of Defendant No.1 in respect of the suit land was not out-and-out sale deed. The Trial Court decreed the suit on 17/06/1989 and directed Defendant No.1 to 3, legal heirs of Kondiba to execute the re-conveyance of the suit property i.e. gut No.143/1 admeasuring 41Rs in favour of the Plaintiff.

5. Being aggrieved by the said decree, Defendant No.3 preferred Regular Civil Appeal No.23/2006 in the court of District Judge – 1, Pandharpur. The Appellate Court framed following points for consideration:

	POINTS	FINDINGS
1	Whether the Plaintiff proves that the sale deed dated 10/04/1980 between him and father of the Defendant No.1 Kondiba was conditional and not out and out sale ?	Yes

2	Whether the Plaintiff prove his readiness and willing to make the repayment of Rs.4000/- towards reconveyance of the suit land ?	Yes
3	Whether the Defendant No.1 committed the breach of agreement respecting reconveyance of the suit land ?	Yes
4	Whether the Defendant No.3 is bona fide purchaser of the suit land having lawful title and possession thereon ?	No
5	Whether the impugned judgment and order in RCS No.23/1989 passed by the learned Civil Judge, Junior Division, needs interference ?	No
6	What order & decree ?	The appeal is dismissed with costs.

6. Considering the evidence on record, the Appellate Court, by decree dated 26/07/2013 dismissed the appeal. Hence, the Second Appeal.

7. The learned counsel for the Appellant Defendant No.3 submits that the courts below failed to consider section 92 of the Indian Evidence Act, 1872 by which the oral evidence is not admissible, if there is written agreement on that point. Section 92 reads thus:

92. Exclusion of evidence of oral agreement.-

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1) Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3) The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6) Any fact may be proved which shows in what manner the language of a document is related to existing facts.

8. He submits that as per section 92 of the Evidence Act, any oral agreement is admissible in the present case. He submits that in the present proceedings, the sale deed executed by the Plaintiff dated

10/01/1980 was out-right sale in favour of their father. Hence, the courts below erred in coming to the conclusion on the basis of oral evidence of the Plaintiff that the sale deed dated 10/01/1980 was on condition to repurchase the suit property. Hence, the judgment and decree passed by the courts below is required to be set aside on this ground only.

9. Heard the learned counsel for the Appellant Defendant No.3 at length. In the present proceedings both the courts below categorically held that the sale deed dated 10/01/1980 was conditional sale. Moreover, on the basis of sale deed, the Defendant re-conveyed the part of the suit property bearing gut No.143/2 by document dated 20/04/1985. This itself shows that the Defendant also acted on the sale deed dated 10/01/1980 as conditional sale deed. In any case, there are concurrent findings of facts recorded by the courts below on the basis of evidence on record. I do not find any substantial question of law involved in the appeal.

10. Hence, the Second Appeal stands rejected.

(K.K. TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.