

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 807 of 2012

(Mohammed Yasin Shikalgar since deceased through heirs & Legal Representatives	Appellants
versus	
Narayan Sadashiv Dongare since deceased through heirs & Legal Representatives	Respondent)

Mr. Vaibhav Gaikwad, Advocate for appellant.
Mr. Umesh Mankapure, Advocate, for respondent.

CORAM : R.K.Deshpande, J.
DATED : 4th AUGUST, 2015.

P.C.

Regular Civil Suit No. 7 of 1982 for redemption of mortgage was decreed by the trial Court on 28.02.1990. Regular Civil Appeal No. 221 of 1990 was dismissed by the lower appellate Court on 29.11.2011. Hence, this second appeal by the original defendant.

I have gone through the documents of the mortgage dated 12.02.1968. It contains a recital that within a period of 10 years, the plaintiff shall get the property released from mortgage. It further states that if the property is not released then the respondent/defendant shall become the owner of the suit property. Both the Courts have construed

this document to be a mortgage and not an out and out sale.

The learned counsel for the appellant has raised two contentions. One is regarding non joinder of necessary parties as required by Order XXXIV, Rule 1 of C.P.C. According to him, in terms of these provisions, all the persons who have right to get the property redeem are the necessary parties.

The father of the plaintiff who was the signatory to the document of mortgage at Exh. 29 has expired. Both the Courts below have held that the document itself confers a right upon the plaintiff to get the property redeemed. The Courts below have held that the suit cannot be dismissed for non joinder of necessary parties. There is nothing on record to show that there are other legal heirs who are entitled to get the property redeemed. The names of the L.Rs are not stated in the written statement. In view of this, no substantial question of law arises for consideration. The second appeal is dismissed.

Consequently, civil application does not survive and the same stands dismissed.

(R.K.DESHPANDE, J.)