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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 32 OF 2015
WITH
CIVIL APPLICATION NO. 60 OF 2015
IN
SECOND APPEAL NO. 32 OF 2015**

Dulhekhan Papamiya Shaikh ... Appellant

Versus

Karansingh Shegaji Walavi and anr. ... Respondents

Mr. Thokade Sanjay for the appellant.

**CORAM : Smt. R.P.SondurBaldota, J.
DATED : February 02, 2015**

P.C.

The suit herein was filed by respondent no. 1 for recovery of the loan amount and the interest due thereon. Respondent no. 2 is the principal debtor and the appellant is the guarantor. The appellant is also witness to the agreement of loan dated 15th April, 2001, the execution of which is not disputed by any of the parties. The agreement also refers to the transfer of land admeasuring 2 acres by respondent no. 2 to respondent no.1 in the event of failure in repayment of the loan. Apparently on the subsequent dates i.e. 15th June, 2001 and 7th July, 2001 some further amounts were advanced by respondent no.1 to respondent no. 2 which are endorsed on the same agreement. The endorsement refers to transfer of larger piece of land

i.e. land admeasuring 4 acres of land in case of non-repayment of the loan. The trial court dismissed the suit holding that the agreement between the parties was not the loan agreement but was for sale of immovable property. The lower appellate court on appreciating the terms of the agreement and the fact that respondent no.1 himself had treated the agreement as an agreement of loan and filed suit for recovery of the amount advanced to respondent no.2, allowed the appeal and decreed the suit.

2. Mr.Thokade, learned counsel for the appellant submits that the lower appellate court failed to appreciate that there was novation to the agreement of 15th June, 2001 and 7th July, 2001. Therefore, according to him, in view of section 62 of the Indian Contract Act, the agreement dated 15th April, 2001 stood rescinded or altered and there was no need to perform the original agreement. This argument advanced before the Lower Appellate Court was rejected by the court holding that the appellant and Respondent no. 2 would be jointly and severally liable to make payment of Rs.70,000/-as per original agreement to respondent no.1 along with interest at the rate of 9% p.a. from the date of filing of the suit till its realization and decreed the suit accordingly.

3. There is no infirmity whatsoever in the view taken by the lower appellate court. Since respondent No.1 himself had treated the agreement as

an agreement for loan, there was no question of trial court going beyond that to treat the agreement as an agreement for sale of immovable property. As regards the contention of novation, it has been already held by the trial court that the addition to the original agreement made on 15th June, 2001 and 7th July, 2001 is not a novation to the agreement but is an independent agreement for the further advance of amount and for handing over the possession of the land admeasuring 4 acres to the appellant in default. There is no substantial question of law arising for consideration. Hence, the appeal is dismissed.

4. In view of the dismissal of the appeal, nothing survives in the Civil Application and the same is accordingly disposed of.

(Smt R.P. SondurBaldota,J.)