

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.50 of 2011
(Shri Jaywant Dnyanu Patil v. Shri Kundlika Nagu Jagadale and others)
Along with
Second Appeal No.48 of 2011
And
Second Appeal No.71 of 2011

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri G.M. Savagave, Advocate for Appellant.
Shri Mandar Limaye, Advocate for Respondents

Coram : R.K. Deshpande, J.

Dated : 29th July, 2015

1. The Trial Court passed a decree for redemption of mortgage in Regular Civil Suit No.291 of 1980 on 26-6-1989. The plaintiff No.1 is held entitled to redemption of suit land, admeasuring 1 acre and 6 ½ are, as described in plaint para 1(b), from the defendant No.2. Regular Civil Appeal No.357 of 1989 filed by the defendant No.2 has been dismissed on 24-8-2010 by passing a preliminary decree in respect of redemption of mortgage.

2. The question involved before the Courts below was that whether the mortgage-deed dated 30-11-1966 at Exhibit 53 was an outright sale or a mortgage with condition for sale. Both the Courts below have relied upon the conduct of the parties in subsequently executing several documents at Exhibits 58, 59, 64 and 67. The Courts below have held that by conduct of the

parties, the document at Exhibit 53 is treated as a mortgage of the suit property and the plaintiff No.1 is, therefore, entitled to redemption of mortgage. The findings are based upon the evidence available on record. At any rate, it is a possible view of the matter, which does not give rise to any substantial question of law in this second appeal.

3. Second Appeal No.50 of 2011 is dismissed.

4. The learned counsel for the appellant submits that in view of the dismissal of the aforesaid Second Appeal No.50 of 2011, Second Appeals Nos.48 and 71 do not survive and the same are also required to be dismissed. Hence, the said second appeals are also dismissed.

Judge.

Lanjewar