

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.82 OF 1992

Shri. Ramchandra Dhondi Patil, since
deceased by his legal heirs
1-A. Bhanusaheb Ranoji Patil,
age about 81 years, occ. Agriculture,
residing at & post : Turchi, Tal. Tasgaon,
District. Sangli

.. Appellant.
(Org. Plaintiff)

Vs.

Shri Dattu Tukaram Tandale

.. Respondent.
(Org. Defendant)

Mr. S.G. Deshmukh i/b Mr. Rakesh Patil, for appellant.
Ms. S.M. Dandekar, for respondent.

Coram : Smt. R.P. SondurBaldota, J.
Date : 20th February, 2015

JUDGMENT :

1. This Second Appeal filed by the original plaintiff is directed against the judgement and order dated 31st January, 1991 passed by the District Court, Sangli in Regular Civil Appeal No.399 of 1985, preferred by the respondent, the original defendant. During pendency of the appeal, the appellant died and his heir has been

brought on record. The parties shall hereinafter are referred to by their original nomenclature.

2. The facts leading to the present appeal are as under :-

Plaintiff filed R.C.S. Suit No.240 of 1980 seeking possession of the suit land situated at Gat No.84 of Village Turachi, Tal. Tasgaon claiming title thereto. The suit land originally belonged to one Kasabai, widow of Dhondo Shembade-Patil. She died on 15th March, 1980. The plaintiff claimed to be her adopted son. According to him, Kasabai was cultivating the land till her death and he as her adopted son is entitled to the suit land on her death. He alleged that the defendant had obtained certain documents relating to the suit land from Kasabai at the time when she was physically and mentally weak without paying any consideration to her. On the basis of the documents, he had taken forcible possession of the suit land after her death.

3. The defendant contested the suit contending that Kasabai had sold the suit land to him by registered deed of conveyance dated 03rd August, 1977. Prior to that she had executed agreement of sale dated 31st March, 1977, which was also duly registered. The defendant paid total consideration of Rs.9,000/- to

her. He had also obtained permission of Assistant Collector, Miraj Division, Miraj for sale of suit land vide his order No. Con-SR-1510 dated 20th June, 1977. According to him, he had been put in possession of suit land on execution of the agreement of sale and has continued to be in possession till date. Therefore, when Kasabai died in the year 1980, she was not in possession of the suit land.

4. The plaintiff examined himself and three witnesses to support his case, whereas the defendant examined himself and nine witnesses. The Trial Court on appreciation of the oral and documentary evidence held that Kasabai at the relevant time was physically and mentally infirm and as such, had become incapable to execute documents for sale of the suit land. Further, the defendant had exercised undue influence and fraudulently got the documents executed by Kasabai. With these findings, the Trial Court decreed suit in favour of the plaintiff on 23rd September, 1985. Aggrieved by the judgement and decree, the defendant preferred appeal to the District Court. By the order impugned herein, the District Court allowed appeal, set aside the judgement and decree of the Trial Court and dismissed suit.

5. The Appellate Court held that the plaintiff had failed to

establish that there was total want of consideration for the sale deed dated 03rd August, 1977. He also failed to establish his title to the suit land for claiming its possession. The Appellate Court was further of the opinion that suit as filed for possession of the suit land without seeking relief for setting aside the sale deed dated 03rd August, 1977 was not maintainable.

6. The appeal was admitted on the substantial questions of law in terms of grounds (E), (J) and (K). The same read as follows :-

(E) That the appellate court ought to have seen that the appellant had proved that the Respondent had exercised undue influence and fraudulently got the sale deed and the Sathekhat executed in his favour by the appellant's mother Kasabai taking disadvantage of her physical and mental disability.

(J) That the appellate court ought not to have relied upon the Respondent's story when he has no evidence to show that he paid Rs.6,000/- Kasabai and further that Kasabai was in need of Rs.6,000/-.

(K) That the Respondent himself admits that during the period of two months when he paid Rs.6,000/- to Kasabai her health had not

become worst itself falsifies the case of the Respondent that Kasabai was in need of Rs.6,000/- for medical treatment.

7. A bare reading of the above grounds is sufficient to know that they are questions of facts and not of law, much less substantial question of law. This appeal is therefore, liable to be dismissed for this reason alone. However, Mr. Deshmukh, the learned advocate appearing for the plaintiff during the course of his submission, has raised some other questions contending that the same are substantial questions of law arising in the appeal for consideration of the Court. He argues that findings of the Appellate Court that the plaintiff has failed to establish that the sale deed dated 03rd August, 1977 is bad for want of consideration is perverse and that sale deed being without consideration is void in view of Section 25 of the Contract Act. His next submission is that the Appellate Court erred in shifting the burden of proof of existence of consideration upon the appellant. The last submission advanced by Mr. Deshmukh is that the sale deed being void, there was no need for the appellant to seek relief for setting the same aside.

8. The proviso to Section 100 of Code of Civil Procedure,

permits raising of other substantial questions of law than those formulated earlier. The appeal is, therefore, heard on the substantial questions of law now raised on behalf of the plaintiff.

9. Perusal of records shows that there was no dispute as regards execution of agreement of sale dated 31st March, 1977 duly registered and the sale deed dated 03rd August, 1977. The dispute is only in respect of the consideration paid for the transaction of sale. The defendant deposed that he had purchased the suit land from Kasabai for the consideration of Rs.9,000/-. He had paid a sum of Rs.6,000/- to her prior to the agreement of sale. At the time of execution of the agreement of sale, he had paid a sum of Rs.2,000/- and later at the time of execution of sale deed, he paid Rs.1,000/- to her, totalling to Rs.9,000/-. He was put in possession of the suit land on the date agreement of sale was executed and duly registered. According to him at the time of execution of the agreement of sale and the sale deed, D.W. 2, D.W. 5, D.W. 6 and one Mr. Bhanudas Tandale were present. Both the documents were written by the Bond Writer-D.W. 3. The further details of payment of Rs.6,000/- to Kasabai prior to execution of agreement of sale have been stated by him in his cross examination. He deposed that even after adoption,

the plaintiff continued to reside with his natural parents and Kasabai resided alone. She was suffering from Ashtma for about 5 to 6 years prior to her death and was taking medical treatment from the doctors at Tasgaon. Sometimes, the defendant used to accompany her to Tasgaon for the treatment from one Dr. Langade. Initially, he had spent Rs.1,000/- for her medical expenses. But after Kasabai expressed her desire to sell the suit land to the defendant, during the period of two months when her health problem had become acute, he had paid Rs.6,000/- from time to time to her. As regards the payment of balance of Rs.3,000/-, same having been paid at the time of execution of agreement of sale and the sale deed, finds reflection in the relevant documents and hence no further evidence from the defendant was in that respect was required. The defendant was subjected to searching cross-examination. But his evidence has remained unshaken.

10. D.W. 2 deposed that Kasabai had, in his presence, acknowledged payment of Rs.6,000/- by the defendant. He also stated that Rs.1,000/- had been paid by the defendant to Kasabai in his presence. D.W.3, D.W. 5 and D.W.6 similarly corroborate the evidence of the defendant. Nothing has been brought on record by

the plaintiff to discredit either the defendant or any of his witnesses.

11. As against the above evidence of the defendant and his witnesses, much is seen to be wanting in the evidence of the plaintiff. He stated that he was adopted by Kasabai in the year 1954 and had been cultivating the land of Kasabai, including the suit land. Kasabai was suffering from Asthma for about 10 to 15 years. Plaintiff claimed that he had been looking after Kasabai. In the October, 1976, the plaintiff had gone to Mumbai for meeting of a Political Party when the defendant and Bhanudas Tandale went to his house and took away Kasabai. The plaintiff remained at Mumbai for 4 to 5 months. Kasabai died while residing at the house of the defendant and her funeral had also taken place at the hands of the defendant. The plaintiff was not present at that time. It is the further evidence of the plaintiff that he learnt about the documents executed by Kasabai in favour of the defendant for the first time in the year 1979. He also stated that Kasabai had complained to the Police Authority against the defendant that the defendant had forcibly detained her in his house. This entire evidence of the plaintiff is vague and without necessary specific particulars. In his cross examination, he stated that he did not know that the suit land was received by Kasabai from

her mother. He had no material to show that any complaint had been made to the Police against the defendant. He was also not aware that Kasabai had obtained permission from Prant Officer for selling the suit land to the defendant. The evidence of the witnesses of the plaintiff is as vague and without particulars as that of the plaintiff.

12. In view of the above evidence, the Appellate Court was correct in holding that the plaintiff had failed to establish that there was no consideration for transaction of sale between Kasabai and the defendant. Consequently, section 25 of the Contract Act has no application.

13. It has been the argument of Mr. Deshmukh, that the lower Appellate Court erred in shifting the burden of proof of existence of consideration upon the plaintiff. According to him, since it was case of the defendant that the suit land had been sold to him by Kasabai by registered sale deed dated 03rd August, 1977, there was no question of shifting the burden of proof of existence of the consideration upon the plaintiff. The burden had to be upon the defendant. There is no substance in the contention, because once the transaction of sale is evidenced by a registered deed of conveyance, any objection thereto on the ground of absence of the

consideration had to be established by the plaintiff. In any case, ample evidence has been brought before the Court by the defendant, as regards existence of consideration and its payment by the defendant to Kasabai.

14. For the above reasons, it is held that there is no perversity in the finding of the Appellate Court that the plaintiff had failed to establish that the sale deed dated 03rd August, 1977 is bad for want of consideration is perverse. In the circumstances, the plaintiff could not have sought the possession of the suit land without seeking the relief of declaration that the sale deed dated 03rd August, 1977 is bad in law. The appeal is, therefore, dismissed.

(Smt. R.P. SondurBaldota, J.)