IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 639 OF 1992

Kashinath Murlidhar Mahale and another .....Appellants
(Orig. Defendants)

: V/S :

Mahadev Govind Mahale, deceased by Lrs
as under :-
1). Bajirao Mahadu Mahale and Ors. .....Respondents

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Mr. Sachin Dhakephalkar h/f. Mr. P.K. Dhakephalkar, Advocate for the appellants.

Mr. P.J. Thorat, Advocate for the respondents.

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Coram :- Smt. R.P. SondurBaldota, J.

12th March, 2015.

P.C. :-

1). This Second Appeal is directed against the judgment and order dated 21st August, 1992 passed by the District Court, Nasik in Civil Appeal No. 106 of 1987 preferred by the respondents. By the impugned order, the District Court set aside the order of the trial Court dismissing Civil Suit No. 171 of 1980 and decreed the suit for specific performance. The appellants are the original defendants and the respondents are the heirs and legal representatives of the original plaintiff. The parties shall hereinafter referred to by their original nomenclature.

2). The plaintiff filed suit for specific performance of the agreement dated 26th April, 1976 for sale of the agricultural land admeasuring 46 ares situate on the western side of Gat no.176, Village-Tilke Kartal, District-Nasik for the consideration of Rs.2,500/-. The entire consideration was paid on the same day and he was put in possession of the suit property. He has been cultivating the land till date. Since the entire consideration had already been paid and the plaintiff was also put in possession of the suit property, all that had remained to be done for completion of the sale was execution of the sale-deed. The defendants contested the suit claiming that the real transaction between the parties was a loan transaction. According to them, they needed to raise a sum of Rs.2,500/- for getting the property at Gat no.176, admeasuring 1 hectares 77 Ares released from the bank. The sum of Rs.2,500/- was not paid towards the sale price of the suit land. The trial Court accepted the plaintiff's case on existence of the contract, possession of the suit property, readiness and willingness of the plaintiff to perform his part of the contract. It also held that, the defendants had failed to prove that the plaintiff carries on business of money-lending and that the transaction between the parties was an old transaction. However, it denied specific performance on the ground that, if the contract is allowed to be enforced, the defendants would be put to great loss and hardship because of the upward revision in the prices. It noted that the defendants had not challenged any of the findings against them in the judgment and decree of the trial Court. It held that, since the agreement for sale had been proved, the price of the land was paid and possession of the land given, nothing had remained to be performed, except for execution of the sale deed. Infact, the suit was a perfect suit for decree of specific performance of the contract. With reference to the decisions of the Apex Court cited before it, the Appellate Court opined that the discretion given under Section 20 of the Specific Reliefs Act to the Court, needs to be exercised in a reasonable manner and not arbitrally. The Court should ensure that there should be disadvantage neither to the plaintiff nor to the defendant by exercise of discretion. It further noted that, specific performance of the contract should be ordinarily granted unless, it is shown that facts established by evidence gave disadvantage to the plaintiff over the defendant. No such disadvantage has been established by the defendants in the case on hand. Therefore, the plaintiff was entitled for specific performance.

3). Mr. Dhakephalkar, the learned Advocate for the appellants, submits that the District Court could not have ignored the contention of the appellants of the real transaction between the parties being of loan transaction merely because the appellants had not filed cross-objections. He argues that the District Court ignored the provisions of the amended

Civil Procedure Code which allows the defendants to defend the orders passed by the trial Court on all grounds, even on the grounds held against them.

4). Perusal of the trial Court's order shows that, it has extensively considered the contention of the defendants as regards the real transaction between the parties being of a loan transaction. The relevant observations read as follows :-

> “. It is admitted fact that before sale agreement Exh.27 the Gat No.176, 2.10 H. was with Baburao Balsheth and from him Defendant wanted to release it by paying him the amount. The Defendant Kashinath (Exh.46) has admitted in evidence that he released the loan from Bahurao Balvant by paying him and of Rs.4,500/- obtained from plaintiff. There were transaction between plaintiff and defendant in 1965 and 1966 as per Exh.26, 32 and 33, in respect of 2.10 H. of land out of Gat no.176. These transactions are admitted by both the parties. They also admitted that these transaction were cancelled before execution of sale agreement Exh.27. The Defendant Kashinath has specifically admitted in cross-examination that transaction at Exh.26, 32, 33 were cancelled. He is ready to pay to plaintiff. The fact itself shows that sale transaction Exh.27 has nothing to do with the previous transaction Exh.26, 32 and 33 and it is solely independent agreement. The parties are also relatives. Hence it is not unnatural for plaintiff who is a well to do person to give financial assistance, to Defendant, who are comparatively persons. A help to relative out of supply will not

amount to money lending. For proving money lending Defendant should prove that it is in the matter of a business dealt with public at large. A sale transaction would not be called as a money lending without license.

5). This view taken by the trial Court, was a probable view of the matter in the facts and circumstances of the case. Therefore, I find no substance in challenge by the defendants to the finding of the trial Court that the defendants had failed to prove that the real transaction between the parties was a loan transaction.

6). In the above facts, no substantial question of law arises in this Second Appeal. Hence, the same is dismissed.

(SMT. R.P. SONDURBALDOTA, J)