

1 This Second Appeal is directed against the concurrent findings of fact and law by the courts below in the suit for redemption of mortgage. The appellant is the original defendant. The defence of the appellant was that the real transaction between the parties was of conditional sale with right to the respondents to re-purchase the suit land within a period of one year and on failure to re-purchase the land,

the transaction of sale became absolute. The courts below rejected the defence noting that there was a single document executed of both the transactions and that a transaction of sale with an option of re-purchase requires execution of two independent documents. The courts below also noted that the consideration mentioned in the agreement for sale of the suit property was much below the true value of the suit property. Further the depositions of the witnesses indicated that the real transaction between the parties was of mortgage.

2 Mr. Shekhavat, the learned advocate appearing for the appellant relying upon the decision of the Apex Court in Vacchalabai Raghunath Ithape (D) by L.R. Vs. Shankarrao Baburao Bhilare (D) by LR's and others, reported in 2013(5) ABR, page 45 and decision of Single Judge of this Court in Mrs. Kamal Shivajirao Katkar vs. Smt. Gajrabai Sopanrao Algude & Ors., reported in 2001(3) ALL MR, page 290 submits that neither the circumstance of absence of two independent documents nor the circumstance of insufficient consideration can be a ground for holding that the transaction between the parties is not conditional sale with a right to re-purchase and is of mortgage.

3 Perusal of the decisions cited shows that in the respective proceedings, the contention of absence of separate documents and that of inadequacy of the consideration had been taken up as an independent ground and it was held that such ground by itself is not

sufficient to hold the transaction to be for mortgage of the property. That is not so in the case on hand. Both the contentions are available as the circumstances supporting the evidence of the respondents as to the nature of the transaction. The courts below have considered totality of the circumstances i.e. absence of separate documents, inadequacy of the consideration and the depositions of the parties to the transaction. Therefore, the decisions cited are not attracted to the facts of the present case. The concurrent findings of the courts below are supported by the material on record. There is also no substantial question of law arising for consideration of this court. Hence, the Second Appeal is dismissed.

4 Mr. Shekhavat, the learned advocate for the appellant states that the appellant will handover possession of the suit property to the respondent on/or before 31st May, 2015.

5 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

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