

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

911 SECOND APPEAL NO. 165 OF 2016
WITH CA/2253/2016 IN SA/165/2016

SHANKAR DHONDU MOTIRALE DIED LRS SHOBHABAI AND ORS
VERSUS
JAYWANTRAO ARJUN PATIL

...
Advocate for Appellants : Rathod Abhaya R.
Advocate for Respondents : Mukul Kulkarni h/f. N.B. Suryawanshi
...

CORAM : T.V. NALAWADE, J.
DATED : 15th July, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No. 159/2000, which was pending in the Court of Civil Judge, Junior Division, Chopda, District Jalgaon and also against the judgment and decree of Regular Civil Appeal No. 78/2012, which was pending before the Ad-hoc District Judge-1, Amalner. Heard both the sides.

2. The suit was filed by respondent Jaiwantrao Patil for relief of possession and for mesne profit. It is the case of plaintiff that he knew Shankar, defendant from prior to 1993. It is contended that in that year defendant requested the plaintiff to give loan of Rs. 35,000/- as he was in need of money for agricultural purpose and he showed readiness and willingness to

execute the conditional sale deed in respect of land Gat No. 77 of village Khachne in favour of plaintiff. It is contended that on 17.5.1993 plaintiff gave Rs. 35,000/- to Shankar and registered conditional sale deed was made in favour of plaintiff. It is contended that possession was given to plaintiff and reconveyance was to be done if the amount was returned within three years. It is contended that on 18.8.1994 Shankar again demanded Rs. 20,000/- and this amount was also paid by plaintiff and accordingly, document of receipt of amount was prepared.

3. It is the case of plaintiff that due to instigation of some persons, defendant forcefully took possession of the suit property. It is contended that he then gave threats that he would implicate plaintiff in false case of atrocity. It is contended that Shankar was addicted to liquor and he had taken loan from others also and ultimately, on 5.10.1997 he committed suicide. It is contended that false case was filed against plaintiff in respect of death of Shankar. It is contended that demand of money was made by plaintiff from the successors of Shankar, but they refused to give the amount and they gave false reply to notice on 28.8.1998.

4. Defendants filed written statement and they contested the suit. They contended that the possession was never given to plaintiff. They contended that the plaintiff was doing money lending business illegally. They contended that plaintiff has made false contention that plaintiff had given Rs. 20,000/- to Shankar and one more document was executed. They contended that due to harassment of plaintiff to Shankar, Shankar committed suicide. They contended that Shankar had already returned the amount taken from plaintiff and much more amount was given towards interest.

5. Counter claim of declaration was made by the defendants that conditional sale deed is not binding on defendants and the relief of injunction was claimed to protect the possession over the suit property. To this counter claim, reply was filed by plaintiff and contentions of defendants were denied.

6. On the basis of aforesaid pleadings, issues were framed. The Courts below have held that the document dated 17.5.1993 was executed by Shankar, but it was by way of security. It is held that possession was never given to plaintiff. The Trial Court had refused alternate relief of return of amount of Rs. 35,000/-. This decision was challenged by original plaintiff

and the first appellate Court has given direction to the defendants to return the amount of Rs. 35,000/- and pay interest at the rate of 6% p.a. from the date of suit till the recovery of entire amount. The First Appellate Court has held that repayment of amount is not proved by the defendants. It is also held that defendants failed to prove that plaintiff is doing money lending business illegally.

7. This Court has carefully gone through the pleading and the evidence. The limited point is involved and that is entitlement of plaintiff to get back the amount of Rs. 35,000/- paid to Shankar under registered document. Execution of this document is not disputed. In written statement, vague defence was taken that more than amount mentioned in aforesaid document was paid by Shankar to the plaintiff. It was also contended in the written statement that the receipt of Rs. 20,000/- was also in respect of interest which was charged by the plaintiff. There is no need to consider the claim of plaintiff in respect of Rs. 20,000/- as the Trial Court has given decree only in respect of Rs. 35,000/-.

8. When aforesaid vague defence of return of money was taken, it appears that the defendants tried to prove two

documents as receipts allegedly issued by plaintiff. Defendant widow of Shankar had no personal knowledge regarding repayment and so, brother of deceased Shankar was examined. Supudu, said brother has tried to say that receipts at Exhs. 99 and 100 were prepared by plaintiff in his presence. On that basis, the defendants tried to prove that some amount was paid. There is no pleading in respect of Exhs. 99 and 100 in the written statement. In view of the nature of evidence given by Supudu, the Courts below have not believed him. In view of these circumstances, this Court holds that the First Appellate Court has not committed any error in holding that the plaintiff is entitled to get the amount paid by him with the aforesaid interest. The findings of the First Appellate Court are on questions of facts and in view of the nature of material discussed above, this Court holds that no substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/