

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.305 OF 2010

Janabai Rama Shinde & Another

APPELLANTS

VERSUS

Gahininath Bala Gitte LRs & others

RESPONDENTS

.....
Mr. C. K. Shinde, Advocate for the appellants
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 2nd FEBRUARY, 2016

ORDER :

1. Heard learned advocate for the appellants.
2. Mr. Shinde, learned advocate appearing for the appellants submits that the mortgage is stated to be of Rs.40/- and as such, it did not require registration and that the mortgage deed had been in possession of the mortgagee but could not be produced. He submits that having regard to entry in *Pahani Patrak*, 1335 *fasli*, it ought to have been considered that the property had been mortgaged. He further refers to that consideration by the trial court that the case of the plaintiffs is dithering on as to whether the property was mortgaged to Bala or Govind, for, according him Bala happened to be father of

Govind. He submits that having regard to aforesaid, the evidence, as has been led on behalf of the plaintiffs is contemporaneous record of the events as had occurred, coupled with the other evidence on record, the courts ought to have decreed the suit.

3. On perusal of the decisions rendered by the trial as well as the appellate court, it clearly emerges that both the courts have concurrently reached to finding of fact about failure of the plaintiffs to establish the case of mortgage. The fact of mortgage according to the courts below cannot be said to have been proved only with reference to a solitary entry in *Pahani Patrak* for a particular period. Rest of the entries do not appear to support the submissions of the plaintiffs about mortgage, for, persons concerned, revenue entries depict, have been cultivating the land in the capacity of purchasers. The oral evidence adduced on behalf of the plaintiffs has been appreciated by the trial as well as the appellate courts finding that said evidence is dithering and not reliable and do not lend credence to the theory of the plaintiffs of mortgage deed having been executed. In the face of weak evidence and going by the probabilities as occurring from the long standing record in respect of the suit property, the courts have considered that the plaintiffs have failed to establish

their case. The appreciation of evidence by the courts below in the facts and circumstances of the case and the evidence on record can hardly be said to be perverse and not adhering to the evidence on record. In the circumstances, the substantial questions of law as are sought to be raised by the appellants, do not appear to have any foundation. Second appeal, as such, stands dismissed.

[SUNIL P. DESHMUKH, J.]

drp/sa305-10