

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

SECOND APPEAL NO. 636 OF 2013

1. Smt. Rukhminibai alias Anusayabai
w/o Bansi Solunke, Age: 72 years,
Occ: Agriculture and household,
R/o : Gangamasala, Tal. Majalgaon,
Dist. Beed
2. Sau. Indubai w/o Dagdu Sejul,
Age : 52 years, Occ: Agriculture,
R/o : Abegaon, Tal. Majalgaon,
Dist. Beed.
3. Sau. Sindubai s/o Rambhau Shinde,
Age: 49 years, Occ: Agriculture,
R/o : Abegaon, Tal. Majalgaon,
Dist. Beed.
4. Shankar s/o Bansi Solunke,
Age: 41 years, Occ: Agriculture and Private Service,
R/o: Gangamasala, Tal, Majalgaon,
Dist. Beed.
5. Sau. Aruna w/o Manohar Thakkar,
Age: 39 years, Occ: Agriculture and service,
R/o: Paludi, Tal. Pathri,
Dist. Parbhani.Appellants

versus

Narayan s/o Bapurao Solunke, died,
through legal representatives :-

- 1/1 Pandharinath s/o Narayan Solunke,
Age: 57 years, Occ: Agriculture,
R/o: Gangamasala, Tal, Majalgaon,
Dist. Beed.
- 1/2 Vithal s/o Narayan Solunke,
Age: 52 years, Occ: Service,
R/o Gangamasala Tal. Majalgaon,
Dist. Beed. At present: Gajanan Temple Road
Majalgaon, Tal. Majalgaon, Dist. Beed.

- 1/3 Subhash s/o Narayan Solunke,
Age: 47 years, Occ: Agriculture,
R/o: Gangamasala Tal. Majalgaon,
Dist. Beed.
- 1/4 Dnyaneshwar s/o Narayan Solunke,
Age: 42 years, Occ: and R/o: as above,
- 1/5 Kalyan s/o Achyut Takekar
Age: 22 years, Occ: Agriculture,
R/o Rajapur, Tal. Georai,
Dist. Beed. ...Respondents.

Mr. B. S. Kudale, Advocate for appellants

CORAM : SUNIL P. DESHMUKH, J.
DATE : 20th October, 2016

ORAL JUDGMENT :

1. Heard learned counsel for the appellants.
2. Appellants-original plaintiffs aggrieved by concurrent findings, recorded by trial court [civil judge, senior division, Majalgaon] dismissing regular civil suit no. 150 of 2006 under judgment and decree dated 29-09-2006 and by appellate court [district judge -1, Majalgaon] in regular civil appeal no. 86 of 2006 under judgment and decree passed on 22-01-2013 confirming the trial court's judgment and decree, are before this court.
3. Learned counsel Mr. Kudale contends that an area of three acre from block No. 158 situated at village Gangamasala, Taluka Majalgaon, District Beed, though had been ostensibly sold by

husband of plaintiff no. 1 and father of plaintiffs no. 2, 3, 4 and 5 to defendant for consideration of Rs.2,000/- under sale deed dated 01-06-1971, yet the transaction that had been executed was for security for the amount being received in bargain.

4. It is being purportedly pointed out that after the transaction entered into in 1971, the mutation could take effect only in 1980. Further, it is tried to be contended that the prices prevailing in 1971 had been much more than as had been shown in the sale deed.

5. Learned counsel submits, since the underlying intention had been that the property had been offered by way of security on the condition of re-conveyance, it was, as such, mortgaged and, suit had been accordingly filed. According to him, trial as well as appellate courts have committed grave error in not taking into consideration vital aspects involved in the matter.

6. Mr. Kudale contends that it was the case of the plaintiffs that the prices prevailing in 1971 of the lands were about Rs.3,000/- per acre where as only a sum of Rs.2000/- given in consideration for sale of three acres of land, and further the revenue record had been mutated only in 1980 though transaction is of 1971 which also is indication of that the transaction, in fact, had been of mortgage.

7. It is stated that during lifetime of Bansi, though he tried, redemption could not take place and after his death the plaintiffs tried redemption, however, the request came to be declined. In the circumstances, suit ensued.

8. It appears on perusal of judgments, the defendants - respondents of course had resisted the contentions of the appellants - plaintiffs.

9. Relevant issue as would be emerging from the pleadings is about the nature of the transaction had been framed by trial as well as appellate court as issue no. 1 and point no. 1 respectively.

10. The two courts have found that the plaintiffs could not bring on record any evidence worth the name to show that the transaction as would be depicted under the registered sale deed had not been intended at all. On the contrary, the courts have appreciated that plaintiff no. 1 in her evidence has admitted that the sale deed dated 01-06-1971 was drafted as per the terms agreed upon and told by the parties and was accordingly registered. It has further been recorded that no other evidence could be brought forth by the plaintiffs about the transaction being of security and the document shows the same to be sale deed without any reservation.

11. In respect of the prices of the lands prevailing at the relevant time, as a matter of fact, the evidence if could be considered would show that the plaintiffs received by way of land price more than then prevailing prices. Nothing has been brought on record which could establish relationship between the parties was that of debtor and creditor or about the transaction being by way of security.

12. On the basis of evidence as is appearing on record, the two courts have concurrently appreciated that the plaintiffs have failed to establish the transaction to be that of mortgage and by way of security.

13. Second appeal does not appear to give rise to any question which can be said to be substantial in law.

14. Second appeal, as such, stands dismissed.

SUNIL P. DESHMUKH,
JUDGE

pnd