

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

**Second Appeal No. 431 of 2015
With
Civil Application 10806 of 2015**

Nilawati w/o Gyanuji Zodpe. **.. Appellant.**

Versus

Sakharam s/o Bapurao Gaikwad
And Another. **.. Respondents.**

Shri. Sudhir G. Bhalerao, Advocate, for appellant.

CORAM: T.V. NALAWADE, J.

DATE : 22 JUNE 2016

ORDER:

1) The appeal is filed against the judgment and decree of Special Civil Suit No.35/2006 which was pending in the Court of the Civil Judge, Senior Division, Parbhani and also against the judgment and decree of Regular Civil Appeal Nos.9/2009 and 84/2010 which were pending in the court of the District Judge-1 Parbhani. The suit filed by the respondent Sakharam Gaikwad for recovery of amount of Rs.1,08,000/- was decreed in his

favour and both the defendants were held liable to make payment of this amount jointly and severally. Decision of the trial Court was challenged by both the defendants by filing separate appeals. The appeal of the defendant No.2, Akilesh Ladda is allowed by the first appellate Court and the decision given against him by the trial Court is set aside. Due to that only defendant No.1, present appellant, is made liable to pay the entire suit amount to the plaintiff. Heard learned counsel for the appellant.

2) It is the case of the plaintiff that defendant No.1 was owner of one plot bearing No.113. It is the case of plaintiff that defendant No.1 had agreed to sell the plot for consideration of Rs.1,08,000/- to him and the sale deed was also executed on 13-12-2004. It is his case that he had made temporary construction over this plot but one Sanjay Sadarwarte forcibly dispossessed him and informed that defendant No.2, general power of attorney holder of defendant No.1, had executed the sale deed in respect of the same plot in his favour on 11-12-2003 for consideration of Rs.1,02,000/-. As the plot was already sold by the power of attorney of the defendant No.1, the

suit was filed by the plaintiff for recovery of the aforesaid amount and also for giving interest. The interest at the rate of 6% per annum is given.

3) Defendant No.1 contested the matter by filing written statement. She contended that she cancelled the power of attorney given in favour of defendant No.2 on 17-1-2004. It is her case that she was deceived by defendant No.2 and the consideration collected by defendant No.2 from third party was not handed over to her and so she is not liable to pay anything to the plaintiff.

4) Defendant No.2 filed written statement. he contended that the power of attorney was given to him on 13-1-2003 by the defendant No.1 and on the basis of that power, he executed sale deed in favour of third party, Sanjay Sadarwarte on 11-12-2003. He contended that he had no knowledge about the sale transaction between plaintiff and defendant No.1.

5) Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. Though there is

oral evidence, it can be said that the documents like power of attorney and the aforesaid two sale deeds are sufficient for the decision of the matter. Copy of power of attorney was shown to this Court and it shows that defendant No.2 was authorized by defendant No.1 to sell the property. The only thing for which defendant No.1 has the grievance is that the defendant No.2 was expected to hand over the consideration to the defendant No.1 after such transaction but the amount collected from third party was not given to her by the defendant No.2. Even if the case of the defendant No.1 that she was cheated by defendant No.2 is accepted as it is, the plaintiff cannot be made to suffer. When defendant No.1 had authorized defendant No.2 to sell the plot and he had also sold the plot, it was not open to the defendant No.1 to sell the same plot to the plaintiff as she was not in a position to transfer the title in favour of the plaintiff. When she had received the amount directly from the plaintiff, it becomes necessary for her to return the amount to the plaintiff.

6) As the amount was not collected by defendant No.2 from plaintiff, the first appellate court has set aside

the decree given against defendant No.2 by the trial Court. Thus the dispute is decided on the basis of aforesaid questions of fact. At least as against the present appellant the findings are concurrent. There is no possibility of formulating any substantial question of law. In the result, the appeal stands dismissed. Civil Application is disposed of.

Sd/-
(T.V. NALAWADE, J.)

rs1