

2. The sale deed was executed in the year 1978 by

Deorao of 2 Acres land from G.No. 177 in favour of defendant No. 1. Plaintiff No. 1 is the widow of Deorao and the remaining plaintiffs are issues of Deorao. They have contended that the entire land G.No. 177 was owned by Deorao and the land was ancestral property of Deorao. It is contended that there was no legal necessity to sale the property, but Deorao was addicted to bad vices and for satisfaction of bad vices, he borrowed some amount from defendant No. 1 and executed the sale deed.

3. It is the case of plaintiffs that the circumstance that the consideration was shown as ₹ 6,000/- only is sufficient to infer that it was not real sale as the market price was much more than the amount shown in the sale deed. It is contended that on the date of the transfer itself, defendant No. 1 had executed agreement in favour of Deorao and he had agreed to re-convey the property. It is contended that Deorao had returned the amount of ₹ 6,000/- and also interest of ₹ 2,000/-, but defendant No. 1 avoided to execute the sale deed in favour of Deorao.

4. Deorao died about 10 years prior to the date of Suit. It is contended that when the mutation was made in favour of defendant No. 1 on the basis of the sale deed, the cause of action took place. It is contended that defendant No. 2 is wife of defendant No. 1 and as the land is shown to be given to her by defendant No. 1, by partition of 1985, she is made party to the Suit. Her name is entered in the revenue record as owner.

5. It is the case of plaintiffs that after the death of Deorao, defendants have taken the possession of the land with the help of police and the possession was not given on the date of the sale deed. It is contended that they recovered one agreement which was written on stamp paper and then they realized that it was nominal transaction and the land was to be re-transferred to Deorao. It is contended that even if it is presumed that it was sale transaction, there was no legal necessity and Deorao had sold more portion than the portion which could have given to his share in family partition and to that extent the sale deed is not binding on the plaintiffs.

6. Defendant Nos. 1 and 2 filed Written Statement and contested the matter. They denied the aforesaid contentions. They contended that the land was sold for valuable consideration by Deorao and the possession was handed over to defendant No. 1 on the date of the sale deed. It is contended that in the year 1978, the prices of the lands were not that high and so it can not be said that it was not real sale transaction. It is contended that the disputed land is adjacent to the village and also the main road and as defendants have made some construction over the land and they intend to convert the entire land for its use for non agriculture purpose, to harass them the Suit is filed. Point of limitation was also raised.

7. On the basis of the aforesaid pleadings, issues were framed by the trial Court. The trial Court has dismissed the Suit by holding that the Suit is barred by limitation. Both

sides have given evidence.

8. The sale deed was executed on 29/05/1978. At that time, the issues of Deorao were minor, but they became major prior to 1996 and so as per the law of Limitation, the transaction ought to have been challenged within 3 years after attaining the majority. If the age of the eldest issue Ramkishan is considered, then it can be said that he became major in or about the year 1986. As this plaintiff has filed the Suit along with his brothers, it can be said that the period of limitation started in the year 1986 itself. The Suit was filed for setting aside the sale deed. It was necessary for the plaintiffs to claim such relief for getting the relief of possession and so the Suit was time barred.

9. The contentions made in the plaint show that during the life time of Deorao, he never tried to get back the possession as there is no such record. It appears that the xerox copy of one agreement was produced, but no evidence was given to prove that on the date of the sale deed, in the year 1978, defendant No. 1 had agreed to re-convey the property to Deorao. Further, it is not the case of the plaintiffs that it was mortgage by conditional sale. If there was independent document, it was necessary for them to file the Suit for enforcement of the so called agreement made in the year 1978 but the Suit is not filed for enforcement of that agreement. In any case, the existence of such agreement is not proved.

10. The submissions made and the reasonings given by the Courts below show that Deorao had filed R.C.S. No.

314/1987 against the defendant and he had challenged the mutation made in favour of the defendants. That plaint was returned, but Deorao did not file Suit before appropriate court. This circumstance also can not be ignored as it needs to be presumed that there was cause of action in the year 1987 as per the case of Deorao but no action was taken and the Suit came to be filed in the year 2008.

11. The oral evidence and the revenue record show that on the date of Suit, the defendants were in possession of the suit property. In the pleadings it is also admitted that the possession was taken over, though it is contended that it was taken after effecting mutation. This circumstance is consistent with the case of the defendants that it was out and out sale and there was no agreement to re-convey the property in favour of Deorao. Even if the best possible case for plaintiffs is considered and Article 109 of the Limitation Act is used, in that case also the Suit was not within limitation. This Court sees no reason to interfere in the decision given by the Courts below. The decision is based on aforesaid facts. No substantial question of law as such is involved in the matter.

12. In the result, Second Appeal stands dismissed.

[T.V.NALAWADE, J.]

