

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

SECOND APPEAL NO. 110 OF 2016

Vaijinath s/o Devrao Khamkar .. Appellant/Plaintiff
vs
Uamrao s/o Nivrutti Sanap and ors. .. Respondents/Defts.

Mr. Hrishikesh V. Tungar, Advocate for appellant

CORAM : SUNIL P. DESHMUKH, J.
15TH FEBRUARY, 2016

ORDER:

1. Heard learned counsel for appellant for quite some length.
2. The appellant-original plaintiff had instituted regular civil suit no. 399 of 2009 in the court of Civil Judge, Junior Division, Beed, seeking cancellation of registered sale deed dated 18-10-1994 executed by him in favour of defendant no. 1. The suit was dismissed on 09-03-2011 giving rise to regular civil appeal no. 46 of 2011 at the behest of the plaintiff which also has been dismissed by District Judge-1, Beed, under judgment and order dated 31-10-2015 and as such, second appeal.
3. It is the case of the appellant-plaintiff that he had executed nominal sale deed on 18-10-1994 in favour of defendant no. 1 as and by way of security for amount of Rs.10,000/- obtained by him

from defendant no.1. It is not in dispute that pursuant to said transaction, defendant no. 1 had been put in possession of an area of 49 aar under the sale deed. Plaintiff could not repay the amount of Rs.10,000/- to defendant no. 1 and hence, in order to repay the same, plaintiff borrowed amount of Rs.10,000/- from defendant no. 5 and it was agreed to transfer the land in favour of defendants no. 3 to 5 and accordingly, defendant no. 1 had executed sale deed in respect of said land favour of defendants no. 3 and 4 on 03-10-2000. At that time, it was clear understanding between the parties that land would be re-conveyed to appellant-plaintiff upon repayment by him of Rs.10,000/-.

4. It is claimed by the plaintiff that while land was being sold to defendants no. 3 and 4, his brother had joined defendant no. 1 as vendor. Thereafter, on 05-08-2002 defendants no. 3 and 4 executed registered sale deed in respect of suit property in favour of defendant no. 5. It is contended by appellant that defendants no. 2 to 4 are money lenders and that as and by way of security they get such documents executed for repayment of money lent by them. Position being really so, defendant no. 1 consented the claim by appellant-plaintiff.

5. Defendants no. 2 to 5 have resisted the suit and submitted that the sale deed in favour of defendant no. 1 was out and out sale and that the suit is hit by law of limitation. It is being claimed that

since value of the land has gone up, plaintiff has turned avaricious and has filed present suit.

6. Issues as would arise from the pleadings had been framed by the trial court. The trial court found that the sale deed dated 18-10-1994 to be not nominal, so is the case in respect of sale deed dated 03-10-2000. The trial court also found that the plaintiff has failed to prove that there was any agreement to re-convey the property. It is held that the plaintiff has failed to prove that sale deed dated 05-08-2002 by defendant no. 3 to 4 in favour of defendant no. 5 is not binding. As far as limitation is concerned, the court found that the cause of action can be said to have arisen for the plaintiff when the sale deed had been executed by defendant no. 1 in favour of defendant no. 5 in the year 2000 when defendants refused to re-convey the property and as such considered the suit to be within prescribed period of twelve years. Suit, however, was dismissed on merits.

7. The matter was taken by plaintiff in appeal under regular civil appeal no.10 of 2011. The appellate court found that the sale deed of 1994 cannot be said to be nominal or that it was by way of security, so was the case in respect of subsequent sale deed executed by defendant no.1. The appellate court as well found that the plaintiff could not prove that there was any agreement to re-convey the property. The appellate court as such considered, the

sale deeds are not liable to be cancelled. It also found the suit to be outside the period of limitation.

8. Both the courts upon threadbare appreciation of evidence have found that the sale deeds were not at all nominal nor by way of security, for, it is an indisputable position that pursuant to sale deed of 1994, defendant no. 1 had been put in possession of the property and he enjoyed it as owner since then continuously without any interruption till subsequently he executed sale deed in favour of defendants no. 3 and 4 and they were accordingly put in possession. They also continued to enjoy the property as absolute owners continuously and the period of twelve years from the date of first sale deed of 1994 expired during which period plaintiff was kept away from the property and yet admittedly he had never asserted his right to ownership. The first sale deed was executed in 1994; the property after last sale deed in defendant no. 5's favour had been mutated in his name; there was no challenge to said mutation. The period of limitation which had started running against the plaintiff since the date of first sale deed with efflux of twelve years as such had been over. Even otherwise, on facts, it is not disputed that the sale deeds depict that those are out and out sale and have been acted upon accordingly. There is no evidence worth credence adduced save and except oral testimonies of a few witnesses about agreement for re-conveyance which on facts and evidence the courts have appreciated to be not worthy of any

acceptance over and above the written recitals appearing in the documents. Appreciation by both the courts of facts and evidence as such cannot be faulted with.

9. Learned counsel for the appellant in the course of his submission purported to place reliance on the case of *Hindu Public and another vs Rajdhani Puja Samithee*, reported in *AIR 1999 SC 964* particularly on head note 'C' wherein it is stated that oral evidence contrary to documentary evidence is admissible. However, in the facts of the present case, said principle is of no assistance to the appellant-plaintiff.

10. In the circumstances, second appeal does not give rise to substantial question, much less any question of law. Second appeal, as such, stands rejected.

SUNIL P. DESHMUKH,
JUDGE

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