

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.658 OF 2014

Bhaskar Krishnaji Patil & Ors. .. Appellants
Vs.
Bhimrao Anna Patil & Anr. .. Respondents

Mr.Nitin Deshpande for the appellants.
None for the respondents.

CORAM : R.D. DHANUKA, J.
DATE : 6th January 2016

P.C.

. By this second appeal, the appellants have impugned the judgment and decree dated 20th March 2014 passed by the Lower Appellate Court allowing the appeal filed by the respondent no.1 (original defendant no.1).

2. The appellants herein (original plaintiffs) had filed a suit inter alia praying for redemption of mortgage before expiry of redemption of mortgage period prescribed in the Deed of Mortgage. According to the plaintiffs, the Mortgage Deed dated 14th February 1982 provided for mortgage period of 10 years. The suit was resisted by the defendant no.1 on various grounds including the ground that the plaintiff was not entitled for redemption of the suit property.

3. Learned trial Judge framed seven issues including the issue as to whether the suit filed by the plaintiffs was premature. Learned trial Judge passed the judgment and decree dated 27th April 2006 holding that though the suit was premature on the date of filing of the suit in

view of the fact that the right of the plaintiffs to redeem the mortgaged property had not distinguished and during the pendency of the suit, the mortgage period was over, the suit for redemption of mortgage was maintainable. Learned trial Judge accordingly passed a preliminary decree in favour of the plaintiffs and against the defendants.

4. The said judgment and decree passed by the learned trial Judge was impugned by the defendant no.1 before the learned District Judge-I, Islampur by filing a Regular Civil Appeal No.49 of 2006.

5. On 20th March 2014, the Lower Appellate Court allowed the said appeal filed by the defendant no.1 on the ground that the suit for redemption of mortgage filed by the appellant was premature. The Lower Appellate Court adverted to the judgment of the Supreme Court in the case of ***Mangal Prasad Tamoli Vs. Narvendshwar Mishra*** reported in ***AIR 2005 SC 1964*** and held that in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. The Lower Appellate Court accordingly held that since in this case, there was no such special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the suit filed by the plaintiff for redemption of mortgage for specific period mentioned in the mortgage deed was premature. The Lower Appellate Court accordingly did not render findings on the other issues.

6. In my view, the Lower Appellate Court was right in

holding that since in this case, there was no such special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the suit filed by the appellant is premature. I am respectfully bound by the judgment of the Supreme Court in the case of *Mangal Prasad Tamoli (supra)*. The said judgment of the Supreme Court squarely applies to the facts of this case. In my view, the appeal is devoid of merits.

7. It is made clear that since the suit was dismissed on the ground that the same was premature, the appellant would be entitled to adopt appropriate proceedings. If any such proceedings are filed by the appellant, the same shall be disposed of on its own merits as expeditious as possible.

8. Appeal is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.