

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

SECOND APPEAL NO. 272 OF 1986

Shri Bajrang Rama Ligade
(Since deceased through L.Rs.)
and others

..... Appellants

Versus

Smt. Tanubai Dhondi Dhumal
(Since deceased through her L.Rs.)
and others

..... Respondents

Ms. S. M. Dandekar, for Appellant
S. P. Thorat a/w Mr. Karan Thorat, for Respondent Nos. 2A(I) to
2A(VI), 2B and 2D.

***CORAM : N. M. Jamdar J.
Thursday 7 July, 2016***

ORAL JUDGMENT

The appellants challenge the Judgment and Order passed by the District Judge, Solapur in Civil Appeal No. 224 of 1981, wherein the learned District Judge allowed the appeal and set aside the Judgment and decree passed by the Civil Judge, Junior Division, Sangola and dismissed the suit filed by the appellants.

2. The appellants filed Special Civil Suit No. 53 of 1972 in respect of the properties bearing Gat Nos. 971/1, 971/2, 963, 959,

249/4 and 249/9 situated at village Kadlas, Tahsil Sangola, district Solapur. According to the appellants/original plaintiffs, the suit property bearing No. 971/1, 971/2, 963 and 959 originally belong to deceased Rama, who was the father of plaintiff nos. 1 and 2 and husband of plaintiff no. 3. According to the appellants/plaintiffs, on 17 May, 1957 a document of mortgage was executed in favour of the defendants.

3. The case of the appellants that the property was given in possession of defendant no. 1 for the period of 16 years with an understanding of re-conveyance and the document was also prepared since the defendant no.1 did not have money lending license. It was the case of the respondents/plaintiffs that survey nos. 249/4 and 249/9 were Watan lands and the defendant nos. 1 and 2 by taking advantage of the absence of deceased Rama in village Kadlas, regranted the property in their own names. It was the case of the appellants/plaintiffs that the defendant no.1 entered the name of defendant no. 2 in property. Accordingly, the appellants/plaintiffs filed the suit for declaration and possession. The defendant no. 1 filed the written statement and contested the suit. They contended that they were tenants of the suit property from 17 May, 1957 pursuant to the document, which was lease document/rent note. As regard the defendant no. 2 a stand was taken that survey nos. 249/4 and 249/9 were sold to her and she is bonafide purchaser and she is cultivating the said property.

4. The learned Civil Judge framed issues as to the nature of the document, whether the appellants proved that they are owners of the property and whether the sale-deed dated 4 November, 1965 between defendant nos. 1 and 2 was not binding on them. The learned Civil Judge decreed the suit holding that the appellants are owners of the suit property. The document dated 17 May, 1957 was a mortgage and the sale-deed dated 4 November, 1965 is not binding on the appellants.

5. The respondents/defendants filed an Appeal No. 224 of 1981 in the District Court, Solapur. The learned District Judge held that the document in question was a lease document and the appellants are not entitled to possession. The learned Judge held that the property was regranted lawfully to the defendant no.1 which was legitimately sold to defendant no. 2. Accordingly, by Judgment and Order dated 19 April, 1985, the appeal was allowed. Thereafter the present Second Appeal is filed.

6. The appeal was admitted on 28 July, 1989 on the following questions of law.

“Whether the Appellate Court has properly considered and interpreted the documents Exhibit 69, to hold that it is lease-deed and not mortgage-deed.

When the Appellate Court has come to the conclusion that Exhibit 69 is the lease-deed, then whether the Judgment passed by the learned Judge is hit by the provisions of Section 85 of the Bombay Tenancy Act.”

7. The questions of law as framed are regarding the nature of the document dated 17 May, 1957.

8. Heard learned Counsel for the parties.

9. The learned Counsel for the appellants submitted that the document in question was a mortgage and it was incorrectly held to be a lease-deed. This submission cannot be accepted. The document dated 17 May, 1957 is typed as a rent/lease-deed (Bhadepatta). The recitals in this deed are that it is a lease transaction. The learned District Judge, therefore, rightly placed burden on the appellants to demonstrate that the document is not lease, even though it is clearly stated to be a lease document. The appellants led oral evidence. It was admitted by the appellants that no complaint was made by the defendant no. 1 that even though the document specifies the respondent as a tenant and no complaint was made about the nature of transaction. No declaration was sought that defendant no.1 is not a tenant.

10. Nothing is shown how the conclusion reached by the learned District Judge that sufficient documentary and oral evidence was not led to demonstrate the real nature of transaction as alleged when the document is clearly stated that it is a lease document. This interpretation of document dated 17 May, 1957 by the learned District Judge as a lease document, in absence of any evidence to the contrary by the appellants, cannot be said to be

incorrect, illegal or perverse reading of the documentary evidence. As a consequence of the document in question being a lease deed and the land being an agricultural land, remedy of the appellants was to invoke the provisions of Bombay Tenancy and Agricultural Lands Act, 1957 (Tenancy Act). The appellants did not adopt this remedy, for which tenancy is required to be terminated by giving notice. There is no question of applicability of Section 85 of the Tenancy Act as the learned District Judge had kept the right of the parties to be agitated in the tenancy proceedings. The learned District Judge has only answered the question as to whether the deed was a mortgage, in the negative. Therefore, the questions of law as framed will have to be answered as against the appellants.

10. Learned Counsel for the appellants submitted that the lands bearing survey nos. 249/4 and 249/9 were Watan land and the sale deed by the defendant no.1 to defendant no. 2, was void. This is not a question of law framed. The appellant/plaintiff no. 1 admitted that, after abolition of the Vatan, occupancy price was paid by the defendant no.1. Mutation entry no. 3933 indicated that the regrant amount that paid by defendant no.1. The learned District Judge, therefore, concluded that the defendant no.1 was competent to transfer the lands to defendant no. 2. There is no error in this finding. Once the appellants did not pay the regrant amount and it was paid by defendant no.1 and on the strength of that position, the defendant no. 1 sold the land to defendant no. 2,

the appellants/plaintiffs cannot seek possession of the same, as admittedly the appellants did not pay the regrant amount.

11. In the circumstances, the contentions advanced on behalf of the appellants cannot be accepted. The questions of law framed will have to be held against the appellants. The Second Appeal is dismissed.

12. No order as to costs.

(N. M. Jamdar, J.)