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

SECOND APPEAL NO. 108 OF 2013

Shivraj s/o Hanmantrao Patil,
Age: 58 years, Occ: Agri.,
R/o. Gurdhal, Taluka Udgir,
Dist. Latur.

..APPELLANT

VERSUS

1. Shankar s/o Bandeappa Biradar,
Age: 70 years, Occ: Agri.,
since deceased through his L.Rs.
- 1a. Annarao s/o Shankar Patil,
Age: 56 years, Occ: Service,
since deceased through his L.Rs.
- 1a(I) Ratnanna @ Sulakhshna w/o
Annarao Patil, 55 years,
Occ: H.H. R/o. Nagalgaon,
Tq. Udgir, at present Vivekanand
Colony Nideban Road, Udgir,
C/o. Nagarjun Chikshalaya, Jalkot
Road, Udgir, District Latur.
- 1a(II) Surekha w/o Kishan Patil,
35 years, Occ: Thakre-nagar,
Aurangabad.
- 1a(III) Nagesh s/o Annarao Patil,
32 years, Occ: Nagarjun
Chikshalaya, Jalkot Road,
Udgir, district Latur.
- 1a(IV) Swaroopa w/o Ramesh Parbha,
30 years, R/o. Halbarga,
Tq. Bhalki, district Bidar.
- 1a(V) Suchita w/o Kalyanrao Dhanure,
28 years, Mahadev Nagar,

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Udgir, Taluka Udgir,
District Latur.

1a(VI) Deepali d/o Annarao Patil,
20 years, R/o. C/o. Nagarjun
Chikshalaya, Jalkot Road,
Udgir, District Latur.

1b. Trimbak s/o Shankar Patil,
50 years, Occ: Service,
R/o. Nagalgaon, Taluka Udgir,
Dist. Latur.

1c. Trivanbai w/o Shankar Patil,
age 60 years, Occ: H.H.
r/O. Nagalgaon, Tq. Udgir,
District Latur.

1d. Vimalbai w/o Kamshetty,
45 years, Occ: H.H.
R/o. Khed, Tq. Aurad,
Dist. Bidar (K.S.)

1e. Kamalbai w/o Baswaraj Patil,
35 years, Occ: H.H.
R/o. Mallapur, Taluka Udgir,
District Latur.

1f. Rukminbai w/o Sheshrao,
35 years, Occ: H.H. R/o.Tipral,
Tq. Udgir

2. Bhagwat s/o Shankar Biradar,
50 years, occ: Agri.,
R/o. Nagalgaon, Tq. Udgir,
District Latur.

3. Vinayak s/o Hanmantrao Patil,
50 years, Occ: Agri., & Service,
R/o. Gurdhal, Tq. Udgir,
Dist. Latur.

..RESPONDENTS

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Mr V.D. Salunke, Advocate for appellant;
Mr P.R. Patil, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 31st JULY, 2017

ORAL ORDER :

The appellant-plaintiff Regular Civil Suit No.335 of 1989 in the Court of Civil Judge, Junior Division, Udgir for declaration of the sale deed dated 22nd February, 1971 as a null and void and for possession of the suit land Survey No. 65/A area 7 Hectare 2 Are and Survey No. 67 area 10 Hectare 22 Are within boundaries described in the plaint.

2. The said suit came to be dismissed on 18th March, 2000, which was confirmed by learned Additional District Judge, Udgir in Regular Civil Appeal NO. 349 of 2001 vide judgment dated 26th July, 2006. As such, this second appeal.

3. Mr. V.D. Salunke, learned Counsel for the appellant would urge that the Court below has

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failed to consider the judgment and decree passed in Regular Civil Suit No. 85 of 1969 and appeal therefrom being Regular Civil Appeal No.123 of 1970. In addition, according to him, since the entire consideration of the land was not paid, there was stipulation in the sale deed, which prompts cancellation of the same. He would then urge that since the land in question was already mortgaged, the transaction was hit by the provisions of Sections 47 and 48 of the Maharashtra Co-operative Societies Act.

4. Per contra, learned Counsel for the respondents-defendants would submit that all the issues which are sought to be canvassed before this Court are twice appreciated by the Court below and through concurrent findings dismissed the claim of the appellant-plaintiff. According to him, sale deed dated 19th February, 1971, for the first time, is sought to be questioned in the civil suit on 6th December, 1989, for such belated act, there is no explanation coming forward. Even otherwise,

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according to the respondents, remedy available to the appellant of independently recovering balance consideration is also required to be appreciated. As such, sought dismissal of the appeal.

5. Having considered rival submissions, it is to be noted that the appellants-plaintiffs are brothers *inter-se* and defendant Nos. 1 and 2 are son and father. It is then to be noted that defendant NO.1 Shankar filed Regular Civil Suit No. 85 of 1969 in respect of suit land against plaintiff No.1 and other six defendants. The said suit was for declaration of ownership, perpetual injunction, which came to be dismissed on 29th July, 1970 by Civil Judge, Junior Division, Udgir. The plaintiff in the said suit i.e. defendant No.1 to the present suit Shankar preferred Regular Civil Appeal No.123 of 1970 against the judgment and decree in Regular Civil Suit No. 85 of 1969. The said appeal was withdrawn by the present respondent seeking permission to file fresh suit.

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6. One Yashwantrao was original owner of the suit land in question, to whom, one Gurubas-Auwa succeeded, who in turn, gifted the land in favour of one Gangabai. Gangabai filed civil suit against Gurubas-Auwa being Regular Civil Suit No. 146/1/1342 fasli, which was decreed in favour of Gangabai. Present plaintiffs are sons of Hanmant, who was son of Gangabai.

7. The respondents claim to be *Bataidar* of Gangabai since 1960 and on 4th March, 1966 Gangabai claimed to have executed agreement of sale in favour of respondent No.1 and on that basis of that agreement of sale, sale deed in his favour on 5th February, 1968. As such, respondent No.1 became owner of the suit property. Apart from above, though much mileage is sought to be drawn from the judgment in Regular Civil Suit No. 123 of 1970, in which, judgment in Regular Civil Suit No. 85 of 1969 initiated at the behest of respondent was questioned, it is required to be noted that in Regular Civil Appeal No. 123 of 1970 judgment

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delivered in Regular Civil Suit No. 85 of 1969 was set aside. As such, the claimed that findings of ownership were answered against respondent No.1 does not hold any substance.

8. Apart from above, the appellant has failed to demonstrate as to how sale deed dated 22nd February, 1971 is sham and bogus document, particularly when there are no specific pleadings or evidence to that effect brought on record.

9. The payment of part consideration of the suit property is also an issue which is sought to be raised, the position of law is much clear on the said issue, as Sections 54 and 55 of the Transfer of Property Act is required to be referred to. Since the appellant can claim lien over the property to the extent of balance consideration, sale cannot be set aside for the purpose of non parting with the entire consideration.

10. Apart from above, it is required to be

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noted that the provisions of Sections 47 and 48 of the Maharashtra Co-operative Societies Act are concerned, present appellant can draw much mileage out of same, particularly when the said provisions protect right of bank and not with of the appellant.

11. In view of above, I hardly notice involvement of any question of law in the present second appeal, which is against concurrent findings. The second appeal lacks merit, must fail, stands dismissed.

(N.W. SAMBRE, J.)

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