

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****SECOND APPEAL NO.415/2014**

Prabhakar s/o Ambadas Kadekar,
 age 55 yrs., occu.labourer,
 r/o Koradgaon Tq.Pathardi,
 at present Nath Nagar, Pathardi.
 Dist.Ahmednagar.

...Appellant..
 (Org.plaintiff)

Versus

1] Kamal w/o Ashruba Dhakne,
 age 50 yrs., occu.household,
 r/o Jogewadi, Post Chincpur Pangur,
 Tq.Pathardi Dist.Ahmednagar.

2] Mangal w/o Ranjendra Garje,
 age 43 yrs., occu.household,

3] Nandubai w/o Sandipan Nagargoje,
 age major, occu.household,

Respondent nos.2 & 3 r/o
 Pagori Pimpalgaon Tq.Pathardi
 Dist.Ahmednagar.

4] Ravindra s/o Ramdeo Mhaske,
 age 33 yrs., occu.agri.,
 r/o Koradgaon Tq.Pathardi.
 Dist.Ahmednagar.

...Respondents..
 (Org.defendants)

.....
 Shri N.B. Narwade, Advocate for appellant.

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CORAM: SUNIL P. DESHMUKH, J.

DATE: 21.03.2017

ORAL JUDGMENT :

1] Heard learned counsel for the appellant.

2] The appellant – original plaintiff had instituted Regular Civil Suit No.53/2008 claiming declaration and injunction.

3] In order to facilitate appreciation, succinct reference to the case pleaded by the plaintiff would be worthwhile.

4] The plaintiff executed two sale deeds dated 16.9.1995 respectively in favour of defendants no.1 & 2. One sale deed relates to land admeasuring 1 Hectare from northern side situated at north-west corner from Gut No.290/1 and the other sale deed is in respect of 1 Hectare from same land Gut No.280/1 on the north east corner. It is the case of the plaintiff, the sale deeds were executed on the implied condition that defendants no.1 & 2 would reconvey aforesaid lands. There had been no time limit for reconveyance. The sale deeds were executed to repay the loan taken by the plaintiff from Bhu Vikas Bank and to get the land released from mortgage

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with one Vimalbai Awasarmal. Subsequently, defendant no.2 alienated the property purchased by her in favour of defendant no.3. Thereafter, the plaintiff issued a notice in April, 2004, which came to be replied opposing the claims under the notice. A criminal proceeding has also been initiated by the plaintiff against defendants no.1 and 2. The plaintiff as such instituted present suit seeking reconveyance and declaration that the sale deeds executed by the plaintiff in favour of defendants no.1 & 2 dated 16.9.1995 to be null and void.

4] The defendants have resisted the suit. They have averred that land area of about 1 Hectare, 61 Are from Gut No.280 was mortgaged by the plaintiff with Sau. Vimalbai Walmik Awasarmal. The plaintiff was in need of money, to redeem said mortgage and also to pay back loan of Maharashtra State Cooperative Agriculture and Rural Development Bank Ltd., Pathardi. The sale deeds were executed to discharge said debts. The defendants no.1 & 2 have paid Rs.30,300/- under Receipt No.38159 to Bhu Vikas Bank towards repayment of loan. The transactions are out and out sale.

5] The trial as well as appellate Courts have

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framed issues and points for determination, respectively, as to whether the sale deeds executed in favour of defendants no.1 & 2 were with the condition of reconveyance, whether the defendants have committed any breach of terms and conditions of the sale deeds and whether those are liable to be cancelled.

6] The Courts hitherto have, on appreciation of evidence, found that though it is the plaintiff's case that the amount has been paid back by the plaintiff to the defendants from time to time, however, save bare words, there is nothing on record to show that any amount had ever been paid to defendants. The oral evidence in this behalf has not corroborated the version of the plaintiff. The Courts have further appreciated that the plaintiff was under an obligation to repay the loan to Bhu Vikas Bank. The defendants had adduced evidence and produced Receipt No.38159 dated 17.10.1995 of Bhu Vikas Bank showing repayment of his loan by them. This particular aspect could not be rebutted by the plaintiff by any credible material. Besides, the plaintiff had admitted during cross-examination that he had sold the land to Vimalbai Awasarmal on the condition that she will

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execute reconveyance and further that after execution of sale deeds in favour of defendants no.1 & 2, the land had been got released from the mortgage of said Vimalbai Awasarmal. There is further evidence by the plaintiff's wife that the amount received from the defendants no.1 & 2 had been utilized to get release of the land from the mortgage of said Vimalbai Awasarmal. The Courts have also gathered from the contents of the sale deeds that they refer to that the sale deeds were executed in order to get the land released from mortgage and for repayment of the bank loan. The sale deeds were considered to be out and out sale. The Courts have further considered that the plaintiff himself had sold yet another piece of 10 Acre land at Pimpalgaon. Further the Courts have taken into account that certain developments have been caused over the suit land by the defendants and that defendant no.2 had sold the land purchased by her to the defendant no.3.

6] The learned counsel for the appellant, during the submissions, refers to a copy of one of the sale deeds. Perusal of the same also shows that it does not embody any condition of reconveyance. In the

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circumstances, the appreciation by the Courts hitherto does not appear to be not adhering to the evidence. Neither any circumstances have been brought about infusing substance in the claim being made by the plaintiff.

7] The second appeal as such does not appear to raise any substantial question for consideration. The same fails and stands dismissed.

(SUNIL P. DESHMUKH, J.)