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

**SECOND APPEAL NO.168 OF 2017
WITH
CIVIL APPLICATION NO.4525 OF 2017
IN
SECOND APPEAL NO.168 OF 2017**

Shrimant Shamrao Shinde,
Age: 76 years, Occ: Agri.,
R/o. Ujani, Tq. Ausa,
Dist. Latur.

..APPLICANT

VERSUS

Ramesh Shamrao Chavan,
Age: 59 years, Occ: Agri.,
R/o.Ujan, Tq. Ausa,
Dist. Latur.

..RESPONDENT

Mr B.S. Deshmukh, Advocate for applicant;
Mr P.F. Patni, Advocate h/f Mr S.J. Salgare,
Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 17th JULY, 2017

ORAL ORDER :

The dispute between parties revolve around two documents i.e. Exhibit-54 sale deed dated 6th June, 2005 and Exhibit-42 an agreement of reconveyance, which is of the same date.

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2. Present appellant filed Regular Civil Suit No. 276 of 2006 based on title for injunction against the respondent, in which, plaint was returned to the present applicant is admitted fact. The execution of the sale deed Exhibit-54 is also not in dispute. There is a denial that Exhibit-42 agreement of reconveyance was executed. The aforesaid pleadings are raised in response to the prayer for reconveyance by present respondent-plaintiff in Regular Civil Suit No.43 of 2012. The suit came to be dismissed, whereas in Regular Civil Appeal No.136 of 2013, learned District Judge-2, Latur vide judgment and order dated 19th March, 2016 decreed the suit.

3. While questioning the findings of the lower appellate Court Mr. Deshmukh, learned Counsel for the appellant would urge that pleadings and oral evidence of the parties if appreciated, it could be easily inferred that lower appellate Court has recorded perverse findings. So as to justify his contention, he would invite attention of this

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Court to the findings recorded in Paragraphs-15 and 17 of the judgment of the lower appellate Court. He would invite attention of this Court to the evidence of witnesses so as to take this Court to the conclusion that perverse findings are recorded by the lower appellate Court.

4. Per contra, Mr. Patni, learned Counsel for the respondent-plaintiff would support the judgment of the lower appellate Court. According to him, if the evidence in the present matter is perused in the backdrop of defence raised by the appellant in the written statement, it could be rightly inferred that the suit deserves to be decreed and accordingly decreed. In addition, he would invite attention of this Court to the evidence and pleadings in Regular Civil Suit No.276 of 2006 initiated by the appellant for simplicitor injunction.

5. Having considered the submissions, it is required to be noted that Exhibit-54 sale deed

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dated 6th June, 2005 is not disputed by either of the parties. What is disputed is execution of Exhibit-42 an agreement of reconveyance. The respondent herein by examining panch witness namely Suresh Shamrao Chavan has proved the said agreement of reconveyance being witness to the said document. In his cross examination, nothing adverse could be brought on record by the applicant so as to infer that document Exhibit-42 an agreement of reconveyance was not executed. In addition, though plea of admissibility of statement in Regular Civil Suit No. 276 of 2006 for simplicitor injunction is not disputed, rather admitted by the applicant, contents of pleadings in such suit are very much available for consideration. Based on the said pleadings and oral independent evidence of witnesses, lower appellate Court has proceeded to decree the suit of the present respondent based on Exhibit-42.

6. Apart from above, in written statement dated 3rd August, 2009 present appellant admitted

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about existence of agreement of recoveyance, particularly by putting present respondent-plaintiff to condition that in case, amount of Rs.1,30,000/- is refunded with 5% interest, present applicant is ready and willing to reconvey the land to the respondent. Considering cumulative effect of evidence and that of very stand taken by the present applicant in the written statement and his pleadings in Regular Civil Suit No.276 of 2006, in my opinion, lower appellate Court has rightly decreed the suit. No infirmity could be noticed so as to call for interference by framing substantial question of law.

7. In view thereof, second appeal lacks merit, fails and stands dismissed.

8. Consequently, civil application stands disposed of.

(N.W. SAMBRE, J.)