

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

**SECOND APPEAL NO. 387 OF 2012
WITH
CIVIL APPLICATION NO. 6689/2012**

1. Balaji s/o Dagdu Manade,
Age – 38 years, occu-Bond writer,
2. Dagdu s/o Maruti Manade,
Age – 72 years, Occu- Business,

Both R/o : Gawali Galli, Latur,
Tq. & Dist. Latur

..APPELLANTS

VERSUS

1. Vishwanath s/o Laxman Hale,
Age : 70 years,
occ. : Agriculture,
R/o : Dhanora, Tq. Ausa,
Dist.: Latur
2. Daivshala d/o Vishwanath Hale,
Age : 34 years,
occ. : Household,
R/o : c/o Vishwanath Hale,
Dhanora, Tq. Ausa,
District Latur

..RESPONDENTS

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Mr.A.P.Bhandari, Advocate for Appellants

Mr.R.P.Adgaonkar, Advocate for respondent nos.1
and 2

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CORAM : SANGITRAO S. PATIL, J.

DATE : JULY 12, 2017

ORAL ORDER :

The appellants have challenged the judgment and decree dated 20.01.2012 passed in Regular Civil Appeal No.157 of 2005 by the learned District Judge – 1, Latur, whereby the judgment and decree dated 28.06.2005 passed in Special Civil Suit No.160 of 2000 by the II Joint Civil Judge, Senior Division, Latur, came to partly confirmed to the extent of Clause Nos.2, 3 and 5 of the operative part thereof.

2. Respondent no.1 (original plaintiff) is the father of respondent no.2 (original defendant no.3). The case of respondent no.1, in short, is that appellant no.1 (original defendant no.1) had assured to marry with respondent no.2 and after the engagement ceremony was performed on 09.08.1999, the appellants insisted respondent no.1 to execute sale-deed in their favour in respect of the suit land on the threat that, otherwise they would break the proposed marriage. Therefore, respondent no.1

was constrained to executed sale-deed in favour of appellant no.1 and his daughter i.e. respondent no.2 with the hope that the proposed marriage would be performed. No consideration was paid by the appellants to respondent no.1 in respect of the said transaction. The possession of the suit land also was never handed over to the appellants. The appellants, ultimately, refused to maintain their word in the matter of performing marriage of appellant no.1 with respondent no.2. Therefore, respondent no.1 filed the suit for cancellation of the said sale-deed. In that suit, appellant no.1 filed a counter-claim seeking declaration of his title to the suit property on the basis of the said sale-deed.

3. It was the case of respondent no.1 that he had paid Rs.25,000/- to the appellants towards marriage expenses. He had claimed refund of that amount from them in the said suit.

4. The learned trial Judge after considering the evidence produced by the parties, decreed the suit, declared the sale-deed as null and void, granted the relief of perpetual injunction restraining the appellants from dispossessing respondent no.1 from over the suit land and further directed the appellants to pay Rs.25,000/- to respondent no.1. The learned trial Judge rejected the counter-claim set up by appellant no.1.

5. The appellants preferred R.C.A. No.157 of 2005. The first appellate Court heard both the parties and after considering the evidence on record in detail, allowed the appeal partly to the extent of the directions given by the trial Court to pay Rs.25,000/- to respondent no.1, confirmed the decree passed by the trial Court holding that the sale-deed in respect of the suit land is null and void and possession of respondent no.1 was ordered to be protected by confirming the relief of perpetual injunction.

6. The learned Counsel for the appellant submits that the first appellate Court did not frame point in respect of the counter-claim set up by the appellant. He submits that though the respondent no.1 was very much available, he was not examined before the trial Court and instead, his wife was examined as a witness. According to him, in view of the judgment in the case of **Janki Vashdeo Bhojwani and anr. Vs. Indusind Bank Ltd and ors., (2005) 2 SCC 217**, the evidence of the wife of respondent no.1 was not admissible. He further relies on the judgment in the case of **Santosh Hazari Vs. Purushottam Tiwai (dead) by Lrs., (2001)3 SCC 179**, to contend that the first appellate Court was bound to discuss the evidence in detail, which has not been done in the present case. The learned Counsel further submits that when the first appellate Court did not accept the claim of respondent no.1 for refund of Rs.25,000/-, allegedly paid by him to the appellants towards the

marriage expenses, it should not have accepted the case of respondent no.1 about having executed sale-deed in respect of the suit land in favour of appellant no.1 as a consideration for his getting married with respondent no.2. According to him, these are the substantial questions, which are required to be considered in this Second Appeal.

7. On the other hand, the learned Counsel for the respondents submits that there are concurrent findings of facts in respect of nature of the sale-deed and possession of respondent no.1 over the suit land, which cannot be disturbed in the Second Appeal. He submits that had appellant no.1 purchased the suit land absolutely without there being any hidden condition, respondent no.2, who had not even married to him, could not have been a co-purchaser of the suit land. According to him, this fact itself exhibits hollowness of the sale-deed that was got executed by appellant no.1 from respondent no.1 on the pretext of getting married

with respondent no.2. He submits that the trial Court as well as the first appellate Court have considered the evidence on record properly and have rightly held that the sale-deed in respect of the suit land, is null and void. He further submits that the trial Court as well as the first appellate Court have rightly appreciated the evidence on record and found respondent no.1 in possession of the suit land and as such, the relief of perpetual injunction has been rightly granted in favour of respondent no.1. According to the learned Counsel for the respondents, the wife of respondent no.1 had personal knowledge about the alleged sale transaction in respect of the suit land, which was basically effected as a consideration of the marriage between appellant no.1 and respondent no.2. He submits that since the wife of respondent no.1 had personal knowledge about the transaction subject matter of the suit, she was competent witness to depose before the Court. Consequently,

the judgment in the case of **Janki Vashdeo Bhojwani** (supra) would not be applicable to the facts of the present case. He then submits that the trial Court as well as the first appellate Court have given specific reasons for accepting the case of respondent no.1. He submits that the point for determination framed by the first appellate Court covers the contentions of appellant no.1 raised in his counter-claim. Acceptance of the case of respondent no.1 would have result of rejection of the counter-claim of appellant. He submits that the concurrent findings of the trial Court and the first appellate Court in respect of the nature of sale-deed and possession of respondent no.1 over the suit land, are fully supported by the evidence on record. They are not perverse. He submits that there is no substantial question of law in this Second Appeal. He, therefore, prays that the Second Appeal may be dismissed.

8. The wife of respondent no.1 has been examined as witness before the trial Court. She being a member of the family of respondent no.1 was bound to know the facts and circumstances under which the sale-deed in respect of the suit land came to be executed in favour of appellant no.1. There is nothing on record to show that she was not aware about the said transaction. Consequently, she would be quite a competent witness to depose about the said transaction. The judgment in the case of **Janki Vashdeo Bhojwani** (supra) would not be applicable to the facts of the present case so as to discard the evidence of wife of respondent no.1.

9. The learned Counsel for the appellants, relying on the judgment in the case of **Santosh Hazari** (supra), submits that the first appellate Court should have framed issue in respect of the counter-claim set up by appellant no.1 and should have discussed the evidence while dismissing the

counter-claim.

10. In my view, the judgment of the first appellate Court covers the case of appellant no.1 set up in the counter-claim. Point no.1 is in respect of the nature of sale-deed dated 26.07.1999, while point no.2 is in respect of possession of the suit land. On the basis of the evidence produced on record, the first appellate Court, with a detail discussion, held that respondent no.1 proved that the sale-deed dated 26.07.1999 is null, void and not binding on him. The learned Judge further held that respondent no.1 proved his possession over the suit land. On the face of the affirmative findings in respect of points Nos.1 and 2 in favour of respondent no.1, the case set up by appellant No.1 in the counter-claim, stating that the sale-deed dated 26.07.1999 is legal and valid and that he is in possession of the suit land, would not at all stand. Thus, though the specific points, whether appellant no.1 proved

that the sale-deed is legal and valid and that he is in possession of the suit land, are not framed, these questions are impliedly considered by the learned first appellate Court. The judgment of the learned Judge of the first appellate Court is quite exhaustive. He has considered the evidence in detail. Moreover, while confirming the judgment and decree of the trial Court, the task of the first appellate Court would be easier one and as held in the case of **Santosh Hazari** (supra), the appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice. In my view, the judgment of the first appellate Court covers almost all the disputed points and evidence thereon, which were the subject matter of the suit and the counter-claim.

11. No explanation has been given by appellant no.1, as to why the daughter (i.e. respondent No.2) of the vendor (i.e. respondent No.1) has been made co-purchaser of the property subject matter of the suit. If respondent no.1 really wanted to sell the suit land to appellant no.1 absolutely without there being a hidden agreement, he would have sold it out to appellant no.1 only and not to his own daughter who was of a marriageable age. This is a strong circumstance to show hollowness of the sale deed in respect of the suit land. The trial Court as well as the first appellate Court have considered in detail all these aspects of the sale-deed and have rightly held that it is null and void.

12. The first appellate Court did not accept the case of respondent no.1 about payment of Rs.25,000/- to appellant no.1 towards the marriage expenses and after giving sufficient reasons, disallowed the claim of respondent no.1 for

recovery of that amount. This shows application of mind on the part of the learned Judge of the first appellate Court. Only because a part of the claim of respondent no.1 has been rejected by the first appellate Court, it cannot be said that the remaining part of the claim also should have been rejected, even though there was sufficient evidence to support that claim.

13. In the above circumstances, I do not find any substantial question of law involved in this Second Appeal. The Second Appeal is liable to be dismissed. In the result, I pass the following order :-

O R D E R

- (i) The Second Appeal is dismissed
- (ii) No costs.
- (iii) Civil Application stands disposed of.

[SANGITRAO S. PATIL, J.]

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