

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

**CIVIL APPLICATION NO. 11524 of 2017
IN/WITH
SECOND APPEAL (STAMP) NO. 19933 OF 2017**

1. Shrinivas S/o Narsingh Rao Navate,
age 44 years occupation labour
R/o Pandharwadi Taluka Mudkhed District Nanded
2. Hiranman S/o Narsingh Rao Navate,
age 60 years occupation and R/o as above.
3. Ganesh S/o Narsingh Rao Navate,
age 49 years occupation and R/o as above
4. Arunabai Manik Rao Bodke,
age 54 years occupation household
R/o Dongargaon Taluka Mudkhed Dist. Nanded
5. Parvatibai Narsingh Rao Navate,
age 79 years occupation household
R/o Pandharwadi taluka Mudkhed Dist. Nanded
6. Prabhu S/o Sambhaji Navate,
age 60 years occupation Agri. R/o as above.

...APPLICANTS

VERSUS

1. Kusum Sudheer Bidwai,
age 61 years occupation business
R/o Banda Ghat road, Nanded District Nanded
2. Sudheer S/o Baburao Bidwai,
age 61 years occupation business R/o as above
3. Shriram S/o Rangrao Lodaji,
age 34 years occupation Agriculture
R/o Pandharwadi Taluka Mudkhed Dist. Nanded.

...RESPONDENTS

Mr S.S. Gangakhedkar, Advocate for applicants.

CORAM : NITIN W. SAMBRE, J.

DATE :15th September, 2017

ORAL ORDER :

Delay of 18 days caused in preferring Second Appeal stands condoned for the reasons disclosed in the application and the appeal is taken out for admission.

1. Present appellants are original plaintiffs, who filed Special Civil Suit No. 144 of 2007 in the Court of Civil Judge (Senior Division), Nanded, for redemption of mortgage of land Gat No. 22 area 4 hectares 43R to the extent of 1H.26R from village Pandharwadi Taluka Mukhed Dist. Nanded, for a consideration of Rs. 1,30,000/-.

2. The Trial Court after considering the claim of the present appellants/original plaintiffs dismissed the suit of the plaintiffs by the Judgment and decree dated October 3, 2011, wherein finding is recorded that the sale deeds Exh. 36, 37 and 38 executed by defendants No.1 and 2 in favour of defendant No.3 are also binding on the present plaintiffs. The Trial Court also noted that the sale deeds, in fact, were

executed, however, the said sale deeds were not towards security of the loan of Rs. 1,30,000/-, as has been claimed. It is further observed that the present appellants have failed to prove that defendant No.1 at any time agreed to reconvey the property in favour of father of the plaintiffs after payment of Rs. 1,30,000/-.

3. Feeling aggrieved, Regular Civil Appeal No. 122 of 2011 was preferred by the plaintiffs/appellants in the Court of District Judge, Nanded, which came to be dismissed by judgment and decree dated February 20, 2017. As such, this Second Appeal.

4. Learned Counsel Shri Gangakhedkar for the appellants would urge that it is apparent from the face of record that both the Courts below have committed error in appreciating the contents of the sale deeds Exh. 37 and 38. According to him, the Court below should have believed the oral testimony of the present appellants in reading down these two documents to mean that there was agreement of reconveyance.

5. The said ground is examined in the light of the observations made by both the Courts below. It is to be noted that in both these sale deeds Exh. 37 and 38, there is no mention or reference about any

mortgage or reconveyance. In view thereof, both the Courts below have proceeded to decide that there was no legal right in favour of the present appellants for seeking the reconveyance of the property. The Appellate Court has rightly drawn support from the judgment of the Apex Court in the matter of **Raj Kishore Vs. Prem Singh {2011(3) Mh.L.J. 1 (SC)}**, which issue is already dealt with in Paragraphs No. 22 and 23 of the judgment of the Appellate Court.

6. In view of above, in my opinion, the grounds sought to be raised are without any basis and both the Courts below cannot be inferred to have committed any error, apparent from the face of record, which warrants consideration in the Second Appellate Jurisdiction. The appeal is against the concurrent finding. As such, the appeal must fail and stands dismissed.

(**NITIN W. SAMBRE, J.**)

pjm