

(1)

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

**SECOND APPEAL NO.587 OF 2017  
WITH  
CIVIL APPLICATION NO.11704 OF 2017**

Sau. Shardabai w/o Ramling Raut  
Age : 55 years, Occu, Agri. & Household,  
R/o Hasegaon (S), Tq. Kallam,  
Dist. Osmanabad

..APPELLANT  
(Orig. Plaintiff)

VERSUS

1. Shivaji Narhari Ankushe,  
Age : 61 years, Occ. Blacksmith,  
R/o Hasegaon (S), Tq. Kallam,  
Dist. Osmanabad
2. Gorakh @ Dada s/o Shivaji Ankushe,  
Age : 30 years, Occ. Blacksmith,  
R/o Hasegaon (S), Tq. Kallam,  
Dist. Osmanabad
3. Janardhan s/o Rajaram Raut,  
Age : 65 years, Occ. Blacksmith,  
R/o Hasegaon (S), Tq. Kallam,  
Dist. Osmanabad

..RESPONDENTS  
(Ori. Defendants)

Mr S.T. Veer, Advocate holding for Mr D.H. Jadhavar, Advocate for  
appellant;  
Mr R.V. Naiknaware, Advocate for respondents no.1 & 2

**CORAM : NITIN W. SAMBRE, J.**

**DATE : 11<sup>th</sup> October, 2017**

**ORAL ORDER :**

Heard learned Counsel for the parties.

(2)

2. This appeal is by original plaintiff in Regular Civil Suit No.55 of 2007, which was for permanent injunction, based on title.

3. The respondents herein are the original owners of the suit property, which is claimed to have been purchased by the appellant vide registered sale deed dated 13<sup>th</sup> November, 2000, for a valuable consideration. It is claimed that it is defendants no.2 and 3 who instigated defendant no.1 i.e. respective respondents herein, to obstruct peaceful possession, which prompted the appellant to file the suit in question.

4. The claim in the suit was resisted by the respondents-defendants by filing written statement at Exh.19, denying the claim of execution of the sale deed Exh.35. It was claimed that the transaction in question was a loan transaction and never to be acted upon.

5. The issues were framed at Exh.29 and were answered as under :-

| Sr. No. | ISSUES                                                                          | FINDINGS           |
|---------|---------------------------------------------------------------------------------|--------------------|
| 1       | Whether plaintiff prove that, the suit property is in her possession as owner ? | In the negative    |
| 2       | Whether plaintiff proves obstruction at the hands of defendants ?               | In the negative    |
| 3       | Whether plaintiff is entitled for relief mentioned in prayer clause (A) & (B) ? | In the negative    |
| 4       | Whether plaintiff is entitled to relief of permanent injunction ?               | In the negative    |
| 5       | What order ?                                                                    | As per final order |

(3)

6. The suit of the present appellant came to be dismissed vide judgment and decree dated 6<sup>th</sup> October, 2007, which was further confirmed in Regular Civil Appeal No.34 of 2012. Thus, the present Second Appeal.

7. Mr Veer, learned Counsel appearing on behalf of the appellant-plaintiff would urge that once the sale deed is brought on record whereby title is vested in the appellant and the appellant has examined herself in support of such sale deed, which fact is not disputed by respondents-defendants, the burden should have been shifted on the respondents to prove that the sale deed was nominal. According to him, while dismissing the claim by discarding the registered title deed in favour of the appellant, the Courts below have committed an error. He claims that if the defence of the respondents is appreciated, it presupposes existence of registered sale deed in favour of the appellant.

8. Learned Counsel appearing on behalf of the respondents-defendants would urge that the title of the respondents was not in dispute till the alleged claim of the appellant of execution of the registered sale deed. According to him, once the appellant-plaintiff has come out with a plea of valid title, she was duty bound to prove the same, which she has failed. In the aforesaid background, the Courts below have rightly dismissed the claim of the appellant.

9. Considered the rival claims. If the substantial question of law which is sought to be framed is considered, it is required to be answered,

(4)

whether the appellant was able to prove her title to the suit property, in view of existence of registered sale deed.

10. The registered sale deed in favour of the appellant is at Exh.35, which has resulted into recording of mutation entry no.494 at Exh.26, 7/12 extract at Exh.27 and form no.8-A at Exh.28.

11. Be that as it may, once the appellant has come out with a case that she has title to the suit property by virtue of Exh.35 – registered sale deed, which issue was denied by the respondents-defendants, it was the duty of the appellant-plaintiff to prove her title by adducing cogent evidence. Had it been a case that the appellant would have proved her title, then only the burden shifts on the respondents-defendants to prove that it was a transaction which was not to be acted upon but was a loan transaction and the respondents have repaid the amount of loan.

12. The appellant has examined herself, however, in her evidence she has demolished her own case by showing inability to narrate the boundaries of the property, the payment of consideration and also the fact that she has not attended the office of the Sub-Registrar for execution of the sale deed in her favour. The fact remains that the appellant has failed to examine either the scribe or witness to the sale deed Exh.35.

13. In the wake of above, even though the sale deed Exh.35 is exhibited, it cannot be said that the said document was proved, based on

(5)

which the prayer for injunction could have been granted in favour of the appellant-plaintiff.

14. In the wake of concurrent findings on the aforesaid issue, recorded by the Courts below, I hardly notice any error on the part of the Courts below in reaching to a conclusion for dismissal of the suit of the appellant.

15. Second Appeal, against concurrent findings, as such fails and stands dismissed.

16. In view of dismissal of the Second Appeal, Civil Application No.11704 of 2017 does not survive and accordingly stands disposed of.

17. It is informed that there was an injunction in favour of the appellant during pendency of the suit and also appeal before the lower appellate court. In view thereof, the injunction is extended till 31<sup>st</sup> December, 2017, as the learned Counsel for the appellant expresses that the appellant intends to approach the Apex Court in the matter.

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

amj