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

SECOND APPEAL NO. 2 OF 2013

Smt. Dwarkabai W/o Ramchandra Patil
age 81 years occupation agriculture
R/o Shahu Nagar, Zilla Peth,
Jalgaon Taluka and Dist. Jalgaon

... APPELLANT
(Orig. plaintiff)

VERSUS

1. Gopalkrishna Pandharinath Nyati,
age 51 years occupation agriculture
R/o Jalgaon Taluka Bhadgaon District Jalgaon.

2. Shantaram Shivram Patil,
age 54 years occupation service,
Chairman, North Maharashtra University,
Employees Co-op. Hsg. Society Ltd., Bambhori,
Pragane Chandsar Taluka Erandol District Jalgaon.

...RESPONDENTS
(Original defendants)

Mr V.T. Chaudhary, Advocate for appellant.
Mr Mangesh G. Patil, Advocate, holding for Mr S.B. Yawalkar,
Advocate, for respondent No.2.

CORAM : N.W. SAMBRE, J.

DATE : 12th July, 2017

ORAL ORDER

The appellant is plaintiff in Special Civil Suit No. 212 of 1995 for declaration and permanent injunction. The appellant/plaintiff has claimed that she is owner of the suit property, and by forged and

(2)

fabricated sale deed dated 16/12/1995 was got executed by defendant No.1, who, in turn, transferred it to defendant No.2 on March 9, 1995. The suit of the present appellant came to be dismissed on January 10, 2002, which was subject matter of challenge in Regular Civil Appeal No. 26/2003, which came to be dismissed on March 5, 2011. As such, this Second Appeal.

2. Shri Choudhary, learned Counsel for the appellant, would urge that once the appellant/plaintiff had come out with a plea that the sale deed in question is sham and bogus document, the burden shifts on the defendant to prove that the sale deed is valid sale deed and executed for valid consideration. In addition, he would urge that so as to prove such a sale deed in question was valid one, neither attesting witnesses nor the scribe of the same is examined.

3. Mr Patil, learned Counsel for the respondent supports both the judgments on the ground that the plaintiff having agitated that the sale deeds are sham and bogus documents, was bound in law to prove the same by adducing effective evidence. According to him, there is concurrent finding, and as such, appeal be dismissed.

4. Upon appreciation of the record, it is required to be noted that the

(3)

Trial Court framed issues at Exh. 79 and answered them accordingly, as under:

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| “1) | Does the plaintiff prove that she is owner and possessor of suit land ? | No |
| 2) | Does the plaintiff prove that defendant No.1 has prepared forged sale deed of suit land in his favour ? | No |
| 3) | Does plaintiff prove that defendant No.1 by impersonation of plaintiff got forged sale deed executed in his favour on 16/12/1994 ? | No |
| 4) | Does the plaintiff further prove that defendant No.1 has no right or title over the suit land ? | No |
| 5) | Does she further prove tht she has not inducted the defendant in possession of suit land ? | No |
| 6) | Does plaintiff prove that she is entitled for injunction as claimed ? | No |
| 7) | Whether plaintiff is entitled for declaration as claimed ? | No |
| 8) | Does plaintiff prove that suit land was under acquisition proceedings for Uttar Maharashtra University as per notice dated 09/09/1994 ? | No |
| 9) | What order or decree ? | As per final order |

Additional Issues:

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|----|---|-------|
| 1) | Whether the suit of the plaintiff is not tenable for non-issuance of suit notice u/s. 164 of the Co-operative Societies Act, 1960 ? | No |
| 2) | Does defendant No.2 prove that suit of plaintiff is not tenable ? | Yes.” |

5. As the present appellant/plaintiff has come out with a plea that

(4)

the sale deed in question was sham and bogus document, in law, the burden is on the plaintiff/appellant to prove the same. But, for relying upon the evidence of Finger Print Expert, no other material is brought on record so as to demonstrate that burden shifts on the respondents/defendants to prove that sale deed is a valid sale deed.

6. Apart from above, both the Courts have appreciated evidence based on the pleadings and has noted the concurrent findings against present appellant.

7. In my opinion, the appeal lacks any substantial question of law. Hence, in view of above observations, the appeal stands dismissed.

(N.W. SAMBRE, J.)

pjm