

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

SECOND APPEAL NO. 267 OF 1993

Bapu Bhima Rakshi

..... Appellant

Versus

Keru Maruti Rakshe

..... Respondent

(since deceased through L.Rs.)

Smt. Jaywantabai Bapurao Rakshe & Ors.

Smt. Anjali N. Helekar for Appellant.

Mr. Uday P. Warunjikar for Respondent Nos.1A to 1F.

CORAM : S.C.GUPTE, J.

DATE : 5 JANUARY 2017.

P.C.

. Heard learned Counsel for the parties.

2. This Appeal was admitted on the following question of law :

“Whether the Appellate Court was right in reversing the trial court's findings for reasons which do not appear proper in law and on appreciation of evidence, as in Grounds 1 to 3 in particular.”

Grounds 1 to 3 are quoted below :

“1. Whether it is necessary in law that an agreement of reconveyance must be a part of the bargain of the original sale of the property.

2. Whether a contemporaneous agreement to reconvey the property sold under the Deed of sale is possible even though there is no reference to the same in the Deed of Sale.

3. Whether an oral agreement to reconvey supported subsequently by an agreement reduced to writing can be specifically enforced.”

3. The Appellant is the original plaintiff, who had filed the suit for specific performance of an oral agreement of reconveyance. It was the Plaintiff's case that the Plaintiff and the Defendant were close relations and that on 24 May 1974, when the Plaintiff was in need of money for his daughter's marriage, he sold the suit land for Rs. 5000/- to the Defendant. The agreement of sale was coupled with an oral agreement for reconveyance of the property after four years. It is further the Plaintiff's case that this oral agreement was reduced into writing on 27 April 1976. The Plaintiff claims that in 1977-78, in pursuance of the reconveyance agreement, the Plaintiff requested the Defendant to reconvey the property, but the latter did not fulfill the demand. Therefore, the Plaintiff filed the present suit against the

Defendant. The suit was decreed on 12 December 1988. The First Appellate Court, however, allowed the Civil Appeal filed by the Defendant and dismissed the suit. That order is under challenge in the present Second Appeal.

4. It is submitted by learned Counsel for the Appellant that the conclusion drawn by the First Appellate Court completely ignores important admissions made by the Defendant in his cross-examination. Learned Counsel has taken me through the pleadings of the parties and the evidence of the Defendant including his examination-in-chief and cross-examination. What transpires from the pleadings of the parties is that, the Plaintiff had claimed an oral agreement of the same date as the written Sale-deed of 24 May 1974 for reconveyance of the property sold under the Sale-deed. It is further the Plaintiff's case that this agreement was reduced into writing subsequently on 27 April 1976 by the parties in the presence of panchas and that the parties and the panchas duly signed the agreement. In the written statement, the Defendant has denied the oral agreement as also the execution of the writing of 27 April 1976 purportedly to reconvey the property to the Plaintiff. The Defendant not only disputes his signature on the writing, but also the contents of the document. In short, the Defendant denies execution of any writing agreeing to reconvey the property to the Plaintiff. Learned Counsel

for the Appellant contrasts the Defendant's evidence with these pleadings, particularly drawing my attention to the examination-in-chief of the Defendant, where the defendant accepts his signature appearing on the writing.

5. The gist of the Defendant's deposition in the examination-in-chief is that he did not sign the particular document at Exh. 24, either in the presence of any other person or otherwise. He disputes that 27 persons were present when he put the signature on that document. He makes a specific averment that when he signed the document, there was no writing on the front page of it. He further avers that the witness Kisan (son of the Plaintiff) told him at the time of signing that the document was being prepared for the purpose of a proposed water scheme, for being given to the Government. It is difficult to see how this amounts to admission of execution of the writing. On the other hand, the Defendant in his evidence stands by his pleadings in the written statement except that he accepts in the examination-in-chief his signature, though he squarely disputes the execution of the document and its contents. Learned Counsel submits that this admission was completely disregarded by the First Appellate Court. The purported admission of the Defendant is not really decisive of execution. It is but one piece of evidence or pointer towards the Plaintiff's case. The First Appellate Court has, in

detail, scrutinized the evidence before it including the purported writing of 27 April 1976. The Court found that the Plaintiff himself did not step into the witness box in support of his case of reduction of oral agreement to writing on 27 April 1976. After taking into account various circumstances including the absence of any date on the document showing it as having been written on 27 April 1976, non-examination of the Stamp Vendor and the Scribe, the Defendant's signature on the document appearing at Sr. No. 28 after the other persons including Plaintiff's son Kisan (PW-1), etc., the Appellate Court came to a conclusion that the so called document showing reconveyance was a got up document and not a genuine document. As for the alleged oral agreement, there is hardly any credible evidence on record. Besides, the case of a contemporaneous oral agreement at variance with the terms of a written agreement, would be a clear non-starter. The Court, in the premises, held that the Plaintiff had utterly failed in establishing any agreement for reconveyance. It is not that some crucial or decisive evidence was disregarded by the First Appellate Court. The Court has not even missed noticing the Defendant's signature. In fact, the First Appellate Court has considered and commented on the factum of the Defendant's signature being placed at Sr. No. 28 amongst the several signatures found on the document. The conclusion drawn by the First Appellate Court is clearly a possible conclusion. It is not a conclusion based on no

evidence, but is supported by evidence. No important or relevant material is disregarded and no irrelevant or non-germane material is considered by the Court for drawing the conclusion. The reasons of the Appellate Court are proper in law and on appreciation of evidence. None of the grounds, quoted above as Grounds 1 to 3, is made out.

6. There is, thus, no merit in the Second Appeal and the same is dismissed. No order as to costs.

(S.C.Gupte, J.)