

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.432 OF 2016
WITH
CIVIL APPLICATION NO.691 OF 2016

...

Shri Narayan Yallappa Kumbhar	...Appellant
v/s.	
Hanmant Bhimrao Kumbhar	...Respondent

...

Mr.Ashok B. Tajane for the Appellant.
None for the Respondent.

...

CORAM : A.A. SAYED J.
DATED : 6 NOVEMBER 2017

ORAL ORDER:

This Second Appeal under Section 100 of the Code of Civil Procedure, 1908, is preferred by the Appellant/original Plaintiff impugning the Judgment and Order dated 28.06.2013 of the Principal District Judge. By the impugned order, the Principal District Judge dismissed the Appeal of the Appellant/Original Plaintiff thereby confirming the Judgment and Order dated 15 January 2009 of the Trial Court dismissing the suit filed by the Appellant/original Plaintiff. The parties shall be hereinafter referred to as per their status in the suit.

2. The suit property is CTS No.225 bearing Gram Panchayat No.92-A and 92-B admeasuring 69 sq.mt., situated at village Kandalgaon, Taluka South Solapur. It was the case of the Plaintiff (Appellant herein) that in the year 1996, he and his brother Namdev were in need of money and had

approached the Defendant (Respondent herein) and each of them had obtained loan of Rs.6,000/- from the Defendant. The total loan was of Rs.12,000/- and interest was to be paid at the rate of 2% p.m. According to the Plaintiff, the Defendant had told the Plaintiff and his brother Namdev to execute the Sale Deed of the suit property by way of security for the loan amount and it was agreed that in the event of repayment of loan amount, the Defendant was to re-execute Sale Deed transferring the suit property back in favour of the Plaintiff and his brother. Accordingly, the Sale Deed came to be executed. According to the Plaintiff, he and his brother paid the interest on the loan amount to the Defendant till November 2003. The Plaintiff claims that the Defendant was in need of temporary accommodation and requested the Plaintiff to give possession of the suit property for temporary period of 2 to 4 months and the Defendant agreed to waive the interest on the loan amount. Believing the words of the Defendant, the Plaintiff handedover possession of the suit property to the Defendant. After 4 months the Plaintiff demanded possession of the suit property, but the Defendant refused and claimed lawful title on the basis of the Sale Deed. The transaction of the suit property was not sale but security for the loan. The Plaintiff, therefore, filed the suit for declaration that the Sale Deed dated 29-10-1996 is sham and illegal and sought relief for possession.

3. The Defendant filed Written Statement resisting the suit. The Defendant contended that he had purchased the suit property as per the Sale Deed dated 29-10-1996 for total consideration of Rs.12,000/- and he got possession of the suit property under the said Sale Deed dated 29.10.1996. The Defendant denied the case of alleged loan and the sale deed being sham or illegal.

4. After considering the oral and documentary evidence, the Trial Court disbelieved the case of the Plaintiff and dismissed the suit. The Trial Court held that the suit was beyond limitation and the suit ought to have been filed within three years from the date of execution of the Sale Deed. The Appellate Court after re-appreciating the evidence on record also dismissed the Appeal.

5. Both the Courts have held that there was no evidence on record to show that the Plaintiff and his brother Namdev had obtained loan of Rs.12,000/- from the Defendant or any interest paid to the Respondent as alleged. It was noted that there is a specific recital in the Sale Deed dated 29-10-1996 that possession of the suit property was given to the Defendant upon execution of the Sale Deed. The name of the Defendant was also mutated in the records of the Revenue. It is noticed that though the loan

was allegedly taken both by the Plaintiff and his brother Namdev, only the Plaintiff has come forward and filed the suit. Namdev has also not been examined as a witness. The judgment of the Supreme Court in the case of **Rohini Prasad and ors. v/s. Kasturchand and anr.** (2000) 3 SCC 668 relied upon by learned Counsel for the Appellant does not in any manner assist the Plaintiff, as there is no misreading of evidence by the Courts below which has led to any miscarriage of justice nor can it be said that the finding is based on no evidence and therefore perverse.

6. The entire case of the Plaintiff turns only on facts. The Plaintiff has not been able to establish that the Sale Deed was entered into only by way of security for the alleged loan. There are concurrent findings of facts by both the Courts below. No substantial question of law arises in this Second Appeal.

7. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

8. The CA does not survive and to stand disposed of.

(A.A.SAYED, J.)