

CORAM : S.C.GUPTE, J.

DATE : 9 JANUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2 There are three connected second appeals, namely, Second Appeal Nos. 414 of 2012, 74 of 2015 and 149 of 2015. These three appeals arise, respectively, from the connected Regular Civil Appeal Nos.301 of 2005, 302 of 2005 and 303 of 2005 before the District Court at Satara. By a common judgment and order delivered on 27 July 2011, the learned District Judge-3, Satara disposed of all three Regular Civil Appeals. That order is challenged, respectively, by the Appellant in these three Second Appeals. All three appeals relate to Gat No.29, Mauje Kushi, Tal. & Dist. Satara (hereinafter referred to as 'suit property'.)

3 The suit property is admittedly a joint family property of the Plaintiffs in RCS No.480 of 1987, namely, Shantabai Kisan Pawar (now represented by her legal heirs) ("Shantabai and others") and Balu Anna Salunkhe, the Plaintiff in RCS No.24 of 2001 ("Balu"). Shantabai and others filed RCS Suit No.480 of 1987 for partition and separate possession of the various properties including the suit property on the grounds that all the properties were ancestral properties of Shantabai and others and Balu; that there was no partition effected by metes and bounds; that Balu had unlawfully dealt with the suit property by executing a deed in favour of the Plaintiff in RCS No.564 of 1987, one Smt. Valubai Pandurang Sawant ("Valubai"); that the alleged sale transaction effected by Balu, as one of the

members of the joint family, was not binding on Shantabai and others. Shantabai and others, accordingly, requested for partition of the properties, including the suit property, and possession of their separate shares in respect of the properties. Balu, on the other hand, filed his own suit, namely, RCS No.24 of 2001, claiming that the original document purporting to be a sale deed was infact a document of conditional sale; and that there was an agreement for re-conveyance executed between the parties on the following day; that Valubai had agreed to reconvey the suit property to Balu in the event of non-payment of the balance consideration of Rs.10,000/-; and that since the said balance consideration of Rs.10,000/- was admittedly not paid by Valubai, the latter was legally bound to reconvey the suit property to Balu. On the other hand, Valubai herself filed a suit, being Regular Civil Suit No.564 of 1987, claiming declaration of her ownership in respect of the suit property and a perpetual injunction against Shantabai and others, Balu as well as a third party, who was claiming possession through their predecessor.

4 On these pleadings, the questions which fell for consideration of the Court were twofold, firstly, whether the sale deed of 20 April 1987, said to be a document of out and out sale in favour of Valubai, was legally binding on other members of the joint family, namely, Shantabai and others and secondly, whether Valubai was legally bound to execute a reconveyance deed in favour of Balu for having failed to pay the balance consideration in respect of the suit property, namely, Rs.10,000/-.

5 The Trial Court passed its common order in the three suits on 16 August 2005 decreeing Valubai's suit partly. The Trial Court declared

Valubai as owner of the property, but dismissed her suit for permanent injunction. The Trial Court dismissed the suit of Shantabai and others for partition and separate possession in respect of the suit property, though it granted the relief of partition and separate possession in respect of other properties. The Trial Court also dismissed the suit of Balu for reconveyance of the suit property.

6 Shantabai and others as well as Balu went in appeal before the First Appellate Court. By its common order dated 22 July 2011, the First Appellate Court allowed all three appeals. It set aside the judgment and decree passed by the Trial Court in Valubai's suit, namely, Regular Civil Suit Nos.564 of 1987, and decreed the suits of Shantabai and others, and Balu, namely, Regular Suit Nos.480 of 1987 and 24 of 2001. The Appellate Court decreed Balu's suit (Regular Civil Suit No.24 of 2001) by ordering reconveyance of the property by Valubai upon Balu's depositing Rs.30,000/- in the Court (part consideration received by Balu in respect of the sale of the suit property). The Appellate Court also decreed the suit of Shantabai and others (Regular Civil Suit No.480 of 1987) by directing partition and separate shares of the parties in respect of the suit property. That common order is in challenge in the present Second Appeals, as noted above.

7 Learned Counsel for the Appellant submits that the conclusions of the First Appellate Court, both on the issue of binding nature of the sale deed dated 20 April 1987 and of the agreement of reconveyance dated 21 April 1987, are vitiated by an error of law. Learned Counsel submits that the Appellate Court has not appreciated the evidence properly and has

come to a dramatically opposite conclusion from the one drawn by the Trial Court.

8 As far as the sale deed of 20 April 1987 ("Exhibit 117") is concerned, the First Appellate Court considered the question as to whether the sale transaction of 20 April 1987 was an out and out sale and whether the purported writing dated 21 April 1987 ("Exhibit 66") was a deed of reconveyance or a mere security for the payment of Rs.10,000/- by Valubai to Balu, as alleged by the Appellant herein. The Court noted from the analysis of the evidence before it that the alleged sale transaction was not an out and out sale. Exhibit 117 discloses that the property was sold by Balu to Valubai for a consideration of Rs.17,000/-. (There is no reference to any legal necessity for sale of this property, though, according to Balu's case in his suit, he disposed of the suit property in favour of Valubai for financial needs.) It was Balu's case that the sale transaction was a conditional sale for the consideration of Rs.40,000/-; that when Balu realised that the sale deed executed by him amounted to an out and out sale, he immediately raised a dispute with Valubai and her husband, whereupon a meeting was held between them in the presence of the villagers on the following day, i.e. on 21 April 1987, and at this meeting, a reconveyance agreement, namely, Exhibit 66, was executed between the parties. Exhibit 66 discloses that the suit property was being sold by Balu to Valubai at a price of Rs.40,000/-; that a sum of Rs.13,000/- out of this amount was received by Balu on 20 April 1987, whereas Valubai was to pay Rs.17,000/- out of the balance amount on the date of registration of the sale deed; that the said sum of Rs.17,000/- was accordingly paid by Valubai to Balu on the date of execution of Exhibit 66; and that she offered to pay the balance amount of

Rs.10,000/- to him within a period of five months as mentioned in Exhibit 66. There are rival cases of the parties on the nature of the two documents, namely, Exhibits 117 and 66. The First Appellate Court after considering the oral and documentary evidence placed by the parties before the Court, came to the conclusion that the sale of the suit property was infact effected for a consideration of Rs.40,000/- on 20 April 1987; that Balu received the amount of Rs.13,000/- on 20 April 1987 and a further sum of Rs.17,000/- on 21 April 1987; and that Valubai was to pay the balance amount of Rs.10,000/- within five months from 21 April 1987. Based on these findings, the First Appellate Court came to a conclusion that the document Exhibit 117 was really in the nature of a conditional sale and that the document Exhibit 66, though designated as '*Thev Pavati*', was infact an agreement of reconveyance of the suit property in the event of Valubai's failure to pay the balance amount of Rs.10,000/- within the stipulated period of five months. The nature of a document and its incidents are mixed questions of law and facts. The First Appellate Court, on the basis of the evidence before it, has interpreted the documents, namely, Exhibits 117 and 66, respectively, to be a deed of conditional sale and an agreement of reconveyance. The appreciation of evidence and application of law to such evidence does not disclose any substantial error of law requiring this Court to entertain the Second Appeals. The findings of the Appellate Court, based on evidence before it, are clearly possible conclusions. None of them can be said to be a conclusion based on no evidence. No material document or circumstance was disregarded by the Appellate Court and no irrelevant document or circumstance considered by it to arrive at its conclusions.

9 As far as the non-payment of Rs.10,000/- is concerned, it is clearly an admitted position between the parties that within the stipulated period of five months from the date of Exhibit 66, Valubai did not pay the amount of Rs.10,000/- to Balu. The Appellate Court observed that Valubai had not uttered a single word in her evidence that she had actually paid the amount of Rs.10,000/- to Balu within the stipulated period or at all. It was not even her pleading in Regular Civil Suit No.564 of 1987 that she had paid this amount to Balu, though in her written statement in Regular Civil Suit No.24 of 2001, she had claimed to have paid the said amount of Rs.10,000/- to Balu. She had not adduced any documentary evidence to prove her contention though, nor had she deposed in her evidence to this payment. The First Appellate Court, in the premises, came to the conclusion that Balu was entitled to have the suit property reconveyed to him by Valubai. The Court accepted Balu's evidence that on 21 April 1987 she had requested Balu to accept further part consideration of Rs.17,000/- towards the conditional sale and offered to execute reconveyance in the event of her failure to pay the balance consideration of Rs.10,000/-. In the premises, based on Exhibit 66, found by the Court to be an agreement of reconveyance, the Appellate Court came to the conclusion that Valubai was bound to execute a reconveyance of the suit property in favour of Balu. This conclusion of the Appellate Court is clearly supported by evidence. Whether Valubai infact paid the amount to Rs.10,000/- to Balu or not is again a question of fact and it is decided against Valubai by the Court on the basis of appreciation of evidence before it. Again, it is not a case of conclusion based on no evidence nor it is a case where any material document or circumstance is disregarded or any irrelevant material or circumstance is considered by the Court while arriving at the conclusion.

No substantial question of law, in the premises, arises for the consideration of this Court.

10 In the premises, the Second Appeals do not give rise to any substantial question of law. All three Second Appeals are, accordingly, dismissed.

11 In view of the disposal of the Second Appeals, the Civil Applications do not survive and the same are also disposed of.

12 No order as to costs.

(S.C.GUPTE, J.)