IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 166 OF 2015

Shrikrishna Jijaba Mahadik (deceased)
through legal heirs Satish Krishna Mahadik
and Ors. …Appellants
Vs.
Hanumant Dagadu Bhise …Respondent.

Mr. Pradip Kadam, for Appellants.
Mr. Vijay Patil, for Respondent.

CORAM: S. J. KATHAWALLA, J.
DATE: 20th JUNE, 2017

P.C.:

1. Regular Civil Suit No. 238 of 2002 was filed by the Respondent-original Plaintiff before the learned Second Joint Civil Judge, Junior Division, Satara wherein a direction was sought against the Appellant-original Defendant to redeem the suit property. The suit filed by the Plaintiff was, by a judgment and decree dated 13th June, 2006, decreed by the trial Court. Being aggrieved, the Appellant-original Defendant impugned the judgment and decree of the trial Court dated 13th June, 2006 by filing an Appeal being Regular Civil Appeal No. 140 of 2006 before the District Judge-3, Satara (Appellate Court) which too directed the Appellant to redeem the mortgage and reconvey the suit property in favour of the Plaintiff within a period of two months from the date of the Plaintiff depositing Rs. 5,500/- before the trial Court and directed that the said amount be

paid to the Appellant upon the Appellant executing deed of reconveyance in favour of the Plaintiff. The heirs of the original Defendant being aggrieved therefrom has preferred the above Second Appeal under Section 100 of the Code of Civil Procedure,1908.

2. For the sake of convenience, the Appellant and the Respondent are hereinafter referred to as per their original status i.e. the Defendant and the Plaintiff respectively.

3. According to the Plaintiff, pursuant to a partition of the family properties, he received the suit property being gat No. 684/R admeasuring 1 H. 25 ares. In the year 1975, his father was unwell and he was in need of money. He therefore borrowed Rs. 2,500/- from the Defendant for which he executed an unregistered agreement for sale in favour of the Defendant pertaining to the suit property. He again approached the Defendant in the year 1983 as he was in need of money when the Defendant insisted that he should mortgage the suit property for an amount of Rs. 5,500/-. Accordingly the Plaintiff mortgaged the suit property with the Defendant for an amount of Rs. 5,500.- by executing a mortgage deed dated 24th June, 1983 in favour of the Defendant and which deed was registered with the office of the Sub-Registrar. Upon execution of the mortgage deed, the suit property was put in possession of the Defendant since

the Defendant was to take income from the suit property in lieu of interest. The mortgage deed provided that the Plaintiff may repay the amount after three years and within 20 years from 24th June, 1983, to the Defendant and the Defendant would redeem the suit property. Therefore, on 16th March, 2002, the Plaintiff served a notice upon the Defendant and sought redemption of the suit property. However, the Defendant did not reply to the said notice and also did not hand over the suit property to the Plaintiff on payment which compelled the Plaintiff to prefer a suit for redemption.

4. The Defendant filed his written statement (Exh. 14) and resisted the plaint. He contended that by an agreement for sale the suit property is in possession of the Defendant since 1975. The Plaintiff has accepted Rs. 2,500/- from the Defendant as earnest amount under the agreement for sale of the suit property; the Plaintiff was supposed to obtain the necessary permissions from the Competent Authorities within a period of six months and upon obtaining the said permission, the Defendant was to pay the remaining consideration to the Plaintiff and execute the sale deed in favour of the Defendant. The total consideration agreed under the said Agreement for sale was Rs. 8,000/-. The Defendant is willing to pay the said amount and the Plaintiff has no right to claim the suit property. The Defendant also admitted that in the year 1983 a mortgage

deed was executed and Rs. 3,000/- was given by him to the Plaintiff. However, according to the Defendant there was an oral agreement between the Plaintiff and the Defendant, that the mortgage deed will be a nominal document and upon the Plaintiff obtaining the necessary permissions from the Competent Authority an agreement for sale would be executed. The trial Court framed the following issues viz.

"1.	*Whether the defendant proves that the mortgage deed dated 24.6.1983 is nominal and agreed not to be acted upon?*	*Negative*
2.	*Whether the Plaintiff is entitled to redemption of Mortgage dated 24.6.1983?*	*Affirmative*
3.	*Whether the Plaintiff is entitled to recover the Possession of the suit land along with reconveyance Deed from the defendant?*	*Affirmative*
4.	*Whether the Plaintiff is entitled to recover mesne Profit from the defendant?*	*Negative*
5.	*What order and decree?*	*As per final order. "*

5. The Defendant in his evidence deposed that the terms and conditions are that the Plaintiff and Defendant should execute the mortgage deed only for convenience and it was decided between them that whenever the Plaintiff will get the permission, the Plaintiff will accept the remaining consideration and the sale

deed would be executed. He therefore deposed that the Plaintiff cannot seek redemption of the mortgage. However, the Defendant in his cross-examination admitted that the mortgage deed dated 24th June, 1983 was related to the transaction dated 5th March, 1975. He admitted that at the time when the mortgage deed was executed in 1983 and registered there was no separate agreement in writing or oral. In his cross-examination he also admitted that he is ready to redeem the suit property.

6. The Plaintiff also examined himself and deposed that in the year 1975 he was in need of money and hence he borrowed Rs. 2,500/- from the Defendant and an unregistered agreement for sale was executed by him in favour of the Defendant. Since the Plaintiff was in need of extra money and he demanded an amount from the Defendant; the Defendant insisted that he should mortgage half portion of gat No. 682 for consideration amount of Rs. 5,500/- and hence he executed the mortgage deed in favour of Defendant and registered the same on 24th June, 1983, whereunder the suit property was to be redeemed after three years till 20 years from the date of transaction. The Plaintiff also examined Shri Nathu Govind Mahadik on his behalf who deposed that both Plaintiff and Defendant are known to him. On 24th June, 1983 he had been to Satara and at that time he met the Defendant, the Plaintiff and Rajaram Kondi Bhise at

Pawainaka and they insisted that he should come to the office of the Sub-Registrar to identify them. They got the document prepared from Ravindra Basant Pawar. At the time of execution of the document, the Defendant handed over Rs. 5,500/- to the Plaintiff before the Sub-Registrar.

7. Considering the evidence given by the Plaintiff and the Defendant, the trial Court came to the conclusion that the Defendant has failed to prove that the mortgage deed dated 24th June, 1983 is nominal and it was agreed that the same will not be acted upon. The trial Court also held that the suit filed by the Plaintiff is within time and not barred by the law of limitation. The trial Court therefore held that the Plaintiff is entitled to possession and reconveyance of the suit property. The trial Court further held that if the Defendant is in wrongful possession of the suit property, only in that case the Plaintiff is entitled to get mense profits. Since the transaction between the Plaintiff and the Defendant arose out of the mortgage deed it cannot be said that the Defendant is in wrongful possession of the suit property and if the possession of the Defendant is not wrongful, the Plaintiff is not entitled to mense profits. The trial Court therefore decreed the suit and directed the Defendant to redeem the suit property to the Plaintiff within two months from the date of the judgment and hand over possession of the suit property to the Plaintiff along with the reconveyance deed.

The trial Court also directed the Plaintiff to deposit Rs. 5,500/- in Court within one month from the date of the decree.

8. Being aggrieved by the said judgment and decree dated 13th June, 2006, the heirs of the original Defendant filed an appeal being Regular Civil Appeal No. 140 of 2006 before the District Judge-3, Satara. The learned District Judge-3, Satara, by his detailed judgment, after appreciating the documentary as well as oral evidence, held that the Plaintiff has proved that the real nature of the transaction between the Plaintiff and the Defendant is a mortgage transaction and the Plaintiff is entitled to the relief of redemption of mortgage. The Appellate Court held that the learned Civil Judge has rightly decreed the suit brought by the Plaintiff and there is no reason to differ from his view. However, according to the Appellate Court, the learned trial Court has not given the necessary directions required in a case of redemption of mortgage. In view thereof, the Appellate Court without disturbing the judgment and decree of the trial Court qua the redemption of mortgage of suit property passed the following directions"

> "*(a) Plaintiff /respondent to deposit Rs. 5,500/- before the trial court within the period of 2 months from the date of decree.*
>
> *(b) After deposit of the amount by the Plaintiff, defendant do execute deed of re-conveyance of the suit property in*

favour of plaintiff and to deliver possession of the suit land to plaintiff within the period of 2 months after depositing the mortgage money by plaintiff.

(c) Defendant do bring into court all documents in his possession and power relating to mortgage property in the suit.

(d) After defendant executing the deed of reconveyance aforesaid, the amount deposited by the Plaintiff be paid to defendant and the documents, if any deposited by defendant into the court, be delivered to plaintiff."

9. Being aggrieved by the said judgment and decree passed by the Appellate Court, the heirs of the original Defendant have filed the present Second Appeal and have repeated the same submissions viz. that the deed of mortgage between the Plaintiff and the Defendant is only a nominal agreement and there was an understanding between the parties that the said mortgage deed will not be implemented ; instead, upon the Plaintiff obtaining the necessary permissions from the Competent Authority, he shall accept the balance consideration and execute the sale deed in favour of the Defendant. Both the trial Court and the Appellate Court have after appreciating the oral as well as documentary evidence by their concurrent findings rejected the said contention of the Defendant. Therefore, in my view, no substantial question of law arises in the matter and the above Second Appeal is dismissed.

(S.J. KATHAWALLA, J.)