

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 673 OF 2013**

Tukaram Babu Yadav

...Appellant

Vs.

Sou. Leelabai Dattatraya Yadav

....Respondent

*Mr. V.S. Talkute for the Appellant.**Mr. Ramdas Hake Patil, instructed by Mr. S.P. Kadam, for the Respondent.***CORAM: S. J. KATHAWALLA, J.****DATE: 23rd June, 2017****P.C.:**

1. Regular Civil Suit No. 9 of 1997 was filed by the Plaintiff – Tukaram Babu Yadav (Appellant herein) against the Defendant – Leelabai Dattatraya Yadav (Respondent herein) for redemption and possession of the landed property bearing gat No. 818, area 1 H and 49 Are of village Atit, Taluka and District Satara (“suit property”). The trial Court decreed the suit to the extent of directing the Plaintiff to pay Rs. 2,000/- to the Defendant within a period of two months from the date of the decree and directed the Defendant to execute the re-conveyance deed of suit property in favour of the Plaintiff and further ordered

that if the Defendant fails to accept the amount and execute the deed of reconveyance, the Plaintiff shall deposit the amount of consideration in the Court to get the deed of reconveyance executed through Court and hand over of possession of the suit property to the Plaintiff.

2. Being aggrieved by the said judgment passed by the Joint Civil Judge, Junior Division and Judicial Magistrate, First Class, Satara dated 15th May, 2003, the original Defendant filed Regular Civil Appeal No. 167 of 2003 before the Principal District Judge, Satara, which Appeal was allowed by the judgment dated 4th August, 2010.

3. Being aggrieved by the judgment passed by the Principal District Judge, Satara, the original Plaintiff (Appellant) herein has filed the above Second Appeal impugning the judgment dated 4th August, 2010 passed by the first Appellate Court under Section 100 of the Code of Civil Procedure, 1908.

4. In the Regular Civil Suit No. 9 of 1997, the Plaintiff contended that the suit property is his ancestral property. In the year 1979 around the month of February, he had to undergo a surgery and therefore needed an amount of Rs. 4,000/-. He requested for a loan of Rs. 4,000/- from the Defendant which she refused. Subsequently, in the presence of the Plaintiff, Defendant, her husband and other villagers it was agreed and decided that the Plaintiff should mortgage

the suit property with the Defendant in lieu of the hand loan of Rs. 4,000/-. Thereafter the deed of mortgage dated 17th February, 1979 was executed and registered before the Office of Sub-Registrar's office, Satara. However, in the year 1982, the Plaintiff realised that a fraud was played on him and the Defendant and her husband had instead of mortgage deed, got a sale deed executed from the Plaintiff. Thereafter again a meeting was held between the Plaintiff, Defendant, her husband and villagers and it was agreed between them that the Plaintiff should pay Rs. 2,000/- to the Defendant for which the Defendant would hand over possession of $\frac{1}{2}$ portion of the suit property to the Defendant and as regards the other half portion the Defendant was to enjoy the income from the remaining land for a period of 10 years and thereafter the Defendant was to pay the remaining Rs. 2,000/- to the Plaintiff and then the Defendant would again execute the sale deed of the suit property in favour of the Plaintiff and also hand over possession of the remaining portion of the property to the Plaintiff. A document to this effect was executed on 20th March, 1983. According to the Plaintiff, half the portion of gat No. 818 was thereafter handed over by the Defendant to the Plaintiff which is described in paragraph 1A of the Plaintiff. The Plaintiff grew guava, jowar crop, sugarcane crop, etc. on the said portion of the Suit property / land. In fact, the Plaintiff and the Defendant implemented irrigation scheme for irrigation of the suit property with the help

of electric motor of the Plaintiff. On 25th November, 1996, the Plaintiff approached the Defendant with the remaining amount of Rs. 2,000/- and requested her to execute the sale deed of the suit property and to hand over the possession of half of the suit property but the Defendant refused. On 26th November, 1996, the Plaintiff issued notice to the Defendant through his Advocate for redemption of mortgage and possession of the total suit property.

5. The Defendant filed her written statement and denied all the contentions in the suit. The Defendant contended that there was no transaction of mortgage by conditional sale between the parties. The Defendant also denied that the Defendant after accepting Rs. 2,000/- had handed over possession of half the portion of the property to the Plaintiff. She denied that there was any agreement between the parties about the repayment of amount and its period and delivery of possession. According to the Defendant, she is cultivating the entire suit property upon execution of the sale deed dated 17th February, 1979. According to the defendant, the document dated 20th March, 1982 is bogus. She submitted that after the year 1979, there was an irrigation scheme submitted by the Plaintiff, Defendant and the villagers. In connection with that scheme, her thumb impression was obtained on certain blank stamp papers and other documents. Taking advantage of the fact that she is not literate, the said blank stamp papers

have been misused by the Plaintiff and others.

6. The trial Court vide its judgment dated 15th May, 2003, came to the conclusion that there was no transaction of mortgage between the Plaintiff and the Defendant and that the registered document dated 17th February, 1979 is a sale deed and cannot be treated as a mortgage deed. However, the trial Court held that the Plaintiff has proved the agreement dated 20th March, 1982 and is entitled for deed of reconveyance in his favour and is also entitled for possession of half the portion of the suit property. The trial Court therefore directed the Defendant to reconvey the suit property in favour of the Plaintiff and also directed that if the Defendant fails to do so, the deed of reconveyance may be executed through Court.

7. Being aggrieved therefrom, the original Defendant filed an appeal before the Principal District Judge, Satara, being Regular Civil Appeal No. 167 of 2003. The Appeal Court by its detailed judgment held that it is not proved by the Defendant that the transaction of 1979 was a mortgage by conditional sale deed and it is not proved that in the year 1982, the Defendant had delivered possession of half of the suit land to the Plaintiff or that the Defendant agreed to reconvey the property after efflux of ten years and the suit is not within limitation. The Appeal was therefore allowed and the judgment passed by the trial Court was set

aside.

8. Being aggrieved by the judgment passed by the Appellate Court dated 4th August, 2010, the original Plaintiff (Appellant) herein has filed the above Second Appeal.

9. After the Advocate for the Appellant made his submissions, the Advocate for the Defendant pointed out the prayers sought for by the Plaintiff in his plaint. Admittedly, the Defendant has sought reconveyance of the suit property only under the deed/document dated 17th February, 1979 upon receiving an amount of Rs. 2,000/- and has not included the document dated 20th March, 1982 in the said prayer. The Plaintiff has prayed that if re conveyance is not carried out by the Defendant as per the document dated 17th February, 1979, then the Court should direct such conveyance. The Plaintiff has also prayed that if the Court comes to the conclusion that if 50 per cent of the property is not handed over to the Plaintiff as per the document dated 20th March, 1982, then the entire suit property be directed to be handed over to the Plaintiff by the Defendant. The Learned Advocate appearing for the Plaintiff has therefore submitted that the trial Court, after holding that the document dated 17th February, 1979, is not a mortgage deed and is a sale deed and that the question of reconveyance as per the said document does not arise, has proceeded to pass an order of reconveyance on

the basis of document dated 20th March, 1982 without the Plaintiff having prayed for any such relief of reconveyance in the suit. The Advocate for the Appellant too realised and appreciated that the order passed by the trial Court itself is erroneous, did not press the matter any further. The question therefore of any substantial question of law being raised in the above Second Appeal does not arise and the Appeal is accordingly dismissed.

(S.J. KATHAWALLA, J.)