

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.251/2017

Moreshwar s/o Krushnarao Shirbhate ..vs.. Krushan @ Babanrao s/o
 Ganeshrao Wankhade

AND

SECOND APPEAL NO.257/2017

Moreshwar s/o Krushnarao Shirbhate ..vs.. Krushan @ Babanrao s/o
 Ganeshrao Wankhade

AND

SECOND APPEAL NO.261/2017

Moreshwar s/o Krushnarao Shirbhate ..vs.. Krushan @ Babanrao s/o
 Ganeshrao Wankhade

AND

SECOND APPEAL NO.265/2017

Moreshwar s/o Krushnarao Shirbhate ..vs.. Krushan @ Babanrao s/o
 Ganeshrao Wankhade

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.

Court's or Judge's orders.

Mr. S. C. Bhalerao, Advocate for appellant.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 15, 2017

1. Heard Mr. S. C. Bhalerao, learned counsel for the appellant in all these four second appeals. These four second appeals are being decided and disposed of by this common order since they arise out of common judgment and decree passed by the learned Civil Judge Senior Division, Yavatmal in Special Civil Suit No.57/2000, which gave rise to Regular Civil Appeal No.61/2010, Regular Civil Suit No.144/2002 which gave rise to Regular Civil Appeal No.62/2010, Regular Civil Suit No.143/2002 which gave rise to Regular Civil

Appeal No.64/2010 and Regular Civil Suit No.142/2002 which gave rise to Regular Civil Appeal No.63/2010.

2. All the civil suits were decided by judgment and decree dated 06.09.2010 whereas all the regular civil appeals were decided by common judgment dated 05.08.2016.

3. According to the learned counsel for the appellant, the civil suits as filed by the respondent-plaintiff are not legal and tenable inasmuch as those are without asking prayer for cancellation of sale deeds, under Section 31 of Specific Relief Act. He also faintly submitted that the suits are barred by limitation. Besides this, no other submissions were advanced before me.

4. In order to appreciate the contentions, few facts will have to be narrated and those are as under:

The respondent in these appeals-Krushna @ Babanrao filed four civil suits for declaration that four sale deeds executed by him in favour of the present appellant-original defendant dated 12.06.1996, 12.07.1996, 13.05.1997 and 24.06.1997 in respect of the field survey No. 24, Gat No.91 admeasuring 9 H 3 R situated at village Yerangaon, Tq. Baghulgaon, Dist. Yavatmal are invalid and not binding on him and those sale deeds were nominal documents and the real transaction between him and defendant was that of money lending transaction.

5. All these four suits were consolidated for evidence by order of the Court to which none of the parties raised any objection. Common evidence, both documentary and oral, was recorded in Special Civil Suit No.57/2000.

6. According to the plaintiff, he was initially in dire need of Rs.10,000/-, to meet the expenses for purchase of seeds etc. for cultivation of his land in the beginning of June-1996. It was informed to him that the defendant who was resident of Yavatmal advances loan to the needy persons with interest on a condition that the borrower should execute the sale deed in respect of his land with an understanding that the said sale deed will be nominal document and after repayment of the loan along with interest, he will execute the document of reconveyance either in favour of the borrower or in favour of his family members. On getting such an information, the plaintiff approached to the defendant and obtained loan of Rs.10,000/- and executed a sale deed Exh.40 on 12.06.1996 in favour of the defendant for an area of 1 H 21 R from his entire land Gat No.91.

7. Again in the year 1996, the plaintiff was in need of money since he was unable to purchase manure and to meet expenses of cultivation and maintenance of family, he approached to the defendant and sought further loan of Rs.10,000/-. This time, the defendant insisted that the plaintiff should give another sale deed showing

consideration of Rs.37,000/-. Therefore, the plaintiff out of compulsion having no other alternative executed another sale deed showing consideration of Rs.37,000/- on 12.07.1996 though actually he received Rs.10,000/- only. This time, he executed the sale deed for another 1 H 21 R from Gat No. 91.

8. Again during the agricultural year 1996-97, it was unfortunately very bad for the agriculturists, the plaintiff was in difficulty and at this crucial juncture, the defendant asked the plaintiff to repay the entire loan with interest of the two transactions or else execute another i.e. the third sale deed as a security for earlier advances. Having found in helpless condition and having no alternative, the plaintiff had to execute the third sale deed on 13.05.1997 by showing the sale consideration of Rs.70,000/- for another area of 2 H 2 R from Gat No. 91 though he did not receive any amount. In the year 1997, the defendant pressurized the plaintiff to repay the entire loan amount otherwise he will obtain forcible possession of the land as shown in the sale deeds. He further asked the plaintiff that if he wants to save his land from forcible dispossession, he should execute another sale deed and accordingly he executed the fourth sale deed on 24.06.1997 for remaining 4 H 59 R land showing sale consideration of Rs.1,50,000/- though the plaintiff did not receive any consideration for the same. The entire land of the plaintiff under these four sale deeds were sold to the defendant.

9. According to plaintiff all these four sale deeds were nominal documents. They were never to be acted upon and at no point of time, he parted with possession of the land as shown in the sale deeds. It is also his case that the defendant is money lender, who indulges in the money lending transactions without there being any license.

10. The defendant filed his written statement and denied the claim of the plaintiff and submitted that all the sale deeds were genuine documents and the plaintiff executed those for consideration.

11. The learned trial Court framed issues and parties went on trial. The plaintiff examined three witnesses including himself whereas the defendant examined five witnesses including himself. Various documents were also produced on record.

12. It would be useful to point out here that the prior to filing all these four suits in the year 1991, the defendant herein filed Regular Civil Suit No.15/1991 for injunction restraining the plaintiff i.e. Krushna from interfering with possession over the suit properties. After full dress trial, the learned trial Court which tried the said Regular Civil Suit No. 15/1991, dismissed the said suit on 07.05.1991. No appeal was filed by the present appellant against the said dismissal of his suit for injunction. In the said suit, a specific finding was recorded that the possession is with Krushna. Even the

said aspect is also admitted by the present appellant during his cross-examination. Various documents in respect of the crop statement show that the plaintiff was in possession of the suit properties which, according to the present appellant, was sold to him. Both the Courts below in detail evaluated this aspect of the matter. Both the Courts below after appreciating the oral as well as documentary evidence found that the sale deeds executed by the respondent in favour of the appellant were nominal one. Therefore, the suit was decreed and appeal carried against the said was dismissed.

13. Though the learned counsel for the appellant submitted that there was no prayer of cancellation of the sale deed, during the course of argument, he conceded that the said prayer is there in the plaint. Further though faintly, he argued on the point of limitation, it is to be noted that in the given set of facts, the question of limitation is a mixed question of fact and law. Therefore, it was for the defendant to lay the foundation for the same. Admittedly, in the present case, the said plea was not raised either in the written statement or before the lower appellate Court. Since the question of limitation being a mixed question of fact and law in the given set of facts, the said cannot be permitted to be agitated even faintly before this Court.

14. It is to be noted that Yerangaon is about 30 km. away from Yavatmal, the ordinary place of residence of the appellant. Further the appellant was not having any other

land of his own. Further it is also established on record that he obtained sale deed from Swarup Singh (PW3) and thereafter he has executed the document of reconveyance in his favour. The learned trial Court has rightly found that Swarup Singh (PW3) was won over by the appellant. Further, both the Courts below recorded a finding that the appellant used to obtain sale deeds from the needy persons at the time of advancing loan.

15. The Courts cannot turn blind eye to what is happening in the society. It is to be noted that Yavatmal district in Vidarbha region is ill-famous for the suicides by peasantries. It appears that the appellant has taken disadvantage of the helplessness of the plaintiff.

16. The conspectus of the aforesaid discussion shows that there involves no substantial question of law. Further, both the Courts below have correctly evaluated the evidence that is brought on record by the plaintiff, warranting no interference by this Court in the present case. Consequently, all the appeals are dismissed with costs.

JUDGE