

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**NAGPUR BENCH : NAGPUR****Second Appeal No. 259 of 2017****[Ku. Leelabai Balkrushna Sakharkar Vs. Sindhubai Uttamrao Surushe]**

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.****Court's or Judge's orders**

Mr. A. J. Thakkar, Adv., for the appellant.
Mr. M. G. Sarda, Adv., for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : 31st July, 2017

The appellant is the original defendant who is aggrieved by the decree for possession passed by the trial Court and affirmed by the first appellate Court.

It is the case of the plaintiff that on 17th January, 2005, she had purchased the suit property for consideration of Rs.40,000-00, after which her name was mutated in the revenue records. According to the plaintiff, the defendant who was her vendor was permitted to reside in a portion of the said property for some time. As the defendant did not hand over possession of that portion, a notice was issued terminating the license and thereafter suit for possession was filed.

In the Written Statement, a stand was taken that the sale-deed dated 17th January, 2005 was got executed

by assuring the defendant that she would get benefit of some Govt. scheme. She being illiterate, her thumb impression was obtained.

After the parties led evidence, the trial Court held that the title of the plaintiff was proved as per the sale-deed at Exh.55. It was further held that the defendant did not lead any evidence to indicate that she was allured into executing the sale-deed. The appellate Court affirmed the said finding.

Shri Thakkar, learned counsel for the appellant, submitted that the sale-deed at Exh.55 was got executed from the defendant without making her aware of the true nature of the document. The contents of said sale-deed were not proved and a certified copy of the same was relied upon. He submitted that the plaintiff took advantage of the illiteracy of the defendant.

Shri M.G. Sarda, learned counsel for the respondent, supported the impugned judgment. According to him, after leading cogent evidence, the plaintiff had proved her case. The amount of consideration was deposited in the account of the defendant at the Post Office. The amount deposited was then withdrawn in the year 2007. He also submitted that no objection was taken to the sale-deed at Exh.55 being marked as an exhibit.

After hearing respective counsel, I find that both the Courts have rightly held that the plaintiff had title on the basis of document at Exh.55. By examining the Postmaster, the deposit of consideration amount in the defendant's account and its subsequent withdrawal after closing the account has been duly proved. I find that both the Courts have properly appreciated the evidence. The appeal, therefore, does not give rise to any substantial question of law.

At this stage, Shri Thakkar, learned counsel, seeks time to vacate the suit property. Shri Sarda, learned counsel, does not oppose grant of reasonable time. The plaintiff is granted time to vacate the suit premises by 31st October, 2017, subject to filing an undertaking before the executing Court within a period of four weeks from today, that vacant possession would be handed over to the plaintiff by 31st October, 2017. If no undertaking is filed within said period, the plaintiff will be free to execute the decree.

Judge