

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.302 OF 2015
PANDURANG S/O HARIDAS KITE AND 3 OTHERS
VS
STATE OF MAHARASHTRA AND 2 OTHERS

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

Court's or Judge's orders

Shri S. A. Chaudhari, Advocate for the appellants.
Shri A. P. Gera, Advocate for the respondent no.3.

CORAM : A.S. CHANDURKAR, J.
DATED : AUGUST 11, 2017.

The appellants are the original plaintiffs who had filed suit for declaration that the sale deed dated 30-4-1984 executed by their father in favour of the father of the defendant no.3 was null and void and also in violation of provisions of the Bombay Tenancy and Agricultural Lands Holding (Vidarbha Region) Act, 1958. According to the plaintiffs, their father was the tenant of the suit property. He was in possession when the Act of 1958 came into force. Despite this, the erstwhile landlord Meghraj Kochar sold the suit field to the plaintiffs' father by sale deed dated 4-1-1964. The father of the defendant no.3 was doing money lending business. The plaintiffs' father borrowed an amount of Rs.10,000/- from the father of defendant no.3 and in lieu thereof a nominal sale deed dated 30-4-1984 came to be executed in his favour. Hence, suit came to be filed challenging that sale deed.

According to the defendant no.3, his father

obtained title on the basis of a valid sale deed. It was denied that it was a loan transaction and the sale deed transferred title in favour of the defendant no.3.

The trial Court held that the sale deed dated 30-4-1984 could not be cancelled as the challenge was barred by limitation. It, however, directed that the plaintiffs would be dispossessed only after following due process of law. The plaintiffs as well as the defendant no.3 challenged this decree by filing two separate appeals. The appellate Court dismissed both the appeals.

Shri S.A. Chaudhari, learned Counsel for the appellant submitted that considering recitals in the sale deed at Exhibit-89, it was clear that said document was executed as loan of Rs.10,000/- was taken by the plaintiffs' father from the father of the defendant no.3. Despite such clear recitals, both the Courts held against the plaintiffs. It was, therefore, submitted that the plaintiffs being in possession, the sale deed was liable to be declared as null and void.

Shri A. P. Gera, learned Counsel for the respondent no.3 supported the impugned judgment. According to him, there was no evidence led by the plaintiffs to indicate that there was a loan transaction between the parties. Though the sale deed was executed on 30-4-1984, the suit came to be filed in the year 1999. The plaintiffs'

father did not take any steps to challenge the sale deed during his life time. It was, therefore, submitted that both the Courts have rightly held in favour of the defendant no.3.

Ms. H. N. Jaipurkar, learned Assistant Government Pleader appears on behalf of the respondent nos.1 and 2.

After hearing respective Counsel, I find that the sale deed in question was executed on 30-4-1984. The plaintiff's father expired on 16-8-1989. He did not take any steps to challenge this sale deed during his life time. The suit itself has been filed in January, 1999. In that backdrop, therefore, it has been held that the relief of declaration was barred by limitation. While dismissing the suit, it was held that the possession of the plaintiff's would remain protected until they were evicted by following due process of law. The plaintiff's also could not lead any evidence to indicate the loan transaction. Considering these aspects, I do not find that both the Courts committed any error while dismissing the suit. Hence, the second appeal does not give rise to any substantial question of law. The same is dismissed. No costs.

JUDGE