

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

SECOND APPEAL (SA) NO. 87 OF 2016
(Sahebrao Nanaji Bhoyar .v. Devidas Sampatrao Potude and others)

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

Court's or Judge's Orders

Shri N.D. Sonare, Advocate for the appellant.
Shri K.R. Lule, Advocate for respondent No.1 on caveat.

CORAM : PRASANNA B. VARALE, J.
12TH APRIL, 2017.

Heard.

Shri Sonare, the learned Counsel for the appellant vehemently submits that both the Courts below erred in the judgments and orders challenged before this Court and it is the bone of contention of the learned Counsel for the appellant that the learned trial Court traverse beyond the pleading of the defendant No.1 while recording the finding of the validity of sale deed and the appellate Court committed the very mistake. The learned Counsel also submits that the other substantial questions of law framed by the appellant and the learned trial Court erred in not framing the issue on the point of fraud and misrepresentation. As such, the Courts below erred in passing the judgments and orders.

On the backdrop of the submission of the learned Counsel for the appellant, I have gone through the judgments and orders passed by the learned trial Court as well as appellate Court. As the submission of the learned Counsel for the appellant is that the Courts below traverse beyond the pleading of the defendant No.1 i.e. appellant in the present matter, it would be necessary to refer to certain facts. The respondent No.1 is the original plaintiff who had instituted the Regular Civil Suit No. 255 of 2007 against the present appellant as well one Subhash Bhoyar for declaration and permanent injunction and in the alternative of possession, it may not be necessary to refer to the details of the suit property. Suffice to say that the suit property is an agricultural land situated

at Watkhedha, Tahsil Deori, District Wardha. The area of the suit land is 1.78 hectares. It would be interesting to note that while opposing this suit, the appellant herein i.e. defendant No.1 filed his written statement. It was the case of the appellant/defendant No.1 that the defendant No.1 was the exclusive owner of the suit property. The appellant denied that the plaintiff was the owner and the possessor of the suit field. It was specifically submitted by the appellant/defendant No.1 that firstly, the defendant No.1 never transferred the title of the suit property or possession to the plaintiff by any valid document and he had never such an intention to do so. While resisting the contentions of the plaintiff, the appellant/defendant No.1 raised counter claim with specific pleadings. It would be necessary to refer to the specific pleadings with counter claim and the same read thus -

“The plaintiff's wife and the wife of the defendant No.1 are cousin. In the month of May, 2006 i.e. on 16/5/2006 the younger daughter of the defendant No.1 was married. For preparations of her marriage ceremony the defendant No.1 had borrowed from the plaintiff an amount of Rs.50,000/-, which was to be returned to the plaintiff 3 months after the marriage with nominal interest at 6% per annum. The transaction was oral as considering the relations between the parties, they had faith in each other. However, only 4 days prior to the marriage of the daughter of the defendant No.1 the plaintiff made demand of some document of security for repayment of the said loan. The defendant No.1 is a mere illiterate person and only known to sign. He was taken by the plaintiff to the office of the Sub Registrar on 12/5/2006 with an understanding that, he was to execute a document of security for repayment of the loan. He signed on the document so prepared by the plaintiff without verifying the details thereof, as he believed the plaintiff. However, it appears that the plaintiff has taken disadvantage of his faith and has fraudulently procured and registered sale deed of the suit field from the defendant No.1. The defendant No.1 had never intended to sell the suit field and had never consciously or voluntarily executed any such document of sale.”

Thus, in the written statement, it was prayed by the

appellant/defendant No.1 that, pass a decree for declaration that the sale deed dated 12/5/2006 in respect of the suit property is a void document not binding on the defendant No.1 or other co-owners of the said field.

The learned Joint Civil Judge, Senior Division, Wardha, on rival contentions of the parties, framed the issues for consideration, namely -

- “1. Does plaintiff prove his ownership and lawful possession over the suit property ?*
- 2. Does plaintiff prove that the defendants obstructed to the peaceful possession of plaintiff over the suit property ?*
- 3. Does defendant No.1 prove that the sale deed dt. 12.5.06 is void and not binding on the defendant No.1?*
- 4. Whether plaintiff entitled for the relief as claimed ?*
- 5. Whether the defendant No.1 is entitled for counter claim ?”*

As referred to above, the appellant is before this Court submitting that both the Courts below traverse beyond the pleadings of the defendant No.1. It would be necessary to refer to the findings of the trial Court on the issue No.3 as the issue No.3 is framed on the backdrop of the written statement and the counter claim of the appellant/defendant No.1. Interestingly enough the learned trial Court proceeded to decide this issue being a preliminary issue. Now, on the backdrop of the contentions of the appellant/defendant No.1 was in need of money for the marriage of his daughter and borrowed the amount of Rs.50,000/- from the plaintiff. It was also submitted in the written statement that the plaintiff demanded some document as of security for repayment of the loan and the defendant No.1 being an illiterate person, was taken by the plaintiff to the office of the Sub Registrar with an understanding that he was to execute the document of security for repayment of loan and the defendant No.1/appellant signed the

documents prepared by the plaintiff. It is further interestingly enough to note that the appellant/defendant No.1 while tendering his evidence before the trial Court, only denies the signature on the documents and states that he signed the blank stamp paper. Again interestingly enough, the witness was examined by the appellant/defendant No.1 and during the cross-examination, flatly denies about the execution of registered sale deed of the disputed field. Not only this, but this witness claims an ignorance either about the document or even about the stand taken by the appellant/defendant No.1 that the money is required for the marriage of his daughter. On the contrary, the plaintiff, by way of adducing the evidence of witness No.2 was successful in proving that the signature of attesting witness to the affidavit. On assessing the evidence, observed as under -

“Similarly, the defendant No.1 though examined the defendant No.1 but his evidence not appear a fact of the defence of loan transaction and the document fraudulently prepared as a sale deed but only stated on the point of possession of the suit property. Likewise, the defendant's witness No.2 Devanand Bhagat also stated about the fact of possession of a suit property but his evidence also not appeared about the fact of loan transaction or the alleged document of the sale deed. On the contrary, the witness Subhash Bhoyar for the defendant during the course of his cross-examination has stated that he does not know as to whether Sahebrao has executed a registered sale deed of the disputed field so also he stated that he does not know as to whether Sahebrao has sold the disputed field to the plaintiff as Sahebrao required money for the marriage of his daughter. Similarly, defendant's witness Devanand in his cross examination stated that he does not know as to whether the defendant sold the disputed field by way of registered sale to the plaintiff. On the other hand, the plaintiff in his oral evidence stated in support of the sale and denied the counter claim of the defendant. After having careful scrutiny of the evidence as adduced it reveals that the sale deed in question vide Ex.31 if perused it is a registered document so also there is an affidavit of defendant No.1 about the property as situated in Wardha project and the fact of 8 acres, so also the 7/12 extract of the suit property attested along with the sale deed

in question at the time of its execution before the Sub-Registrar. The plaintiff by way of adducing the evidence of his witness No.2 also got proved the signature of attesting witness to the sale deed. On the other hand, the defendant No.1 though himself come with the defence that the document is prepared for the security of loan amount but during the course of his cross examination in length he stated that he has only made signature on a blank paper, so also he denied his other signatures. Thus, the above fact itself go to show the conduct of the defendant No.1 towards the execution of the alleged sale deed. It is material that the defendant No.1 himself come with the submission of the is prepared for the security of loan so in such circumstances, the defendant No.1 has to establish the above fact earlier than to find out the irregularities like, the payment, possession, signatures etc. In this respect, the defendant No.1 has examined as many as total three witnesses but a perusal of the evidence of the witnesses for the defendant No.1 except himself, no one has stated about the fact of loan transaction except the aspect of possession.”

This clearly shows that the learned trial Court neither committed any error in appreciating the evidence nor the learned trial Court traverses beyond the pleading by the appellant/defendant No.1.

The learned appellate Court also framed the identical issue namely, “Whether the defendant No.1 proves that sale deed is a sham and bogus document ?” The appellate Court recorded its negative finding on the said issue. The learned appellate Court by its own independent findings apart from the findings of the trial Court, answered the issue No.3 in negative. It may be useful to refer to the findings of the appellate Court reflected in the judgment and order. The same reads thus -

“15. As far as the evidence regarding the execution of the sale deed dt. 12.5.2006 (Ex.31) is concerned, the plaintiff has examined himself at Ex.29. The plaintiff has also relied on the evidence given by PW 2 – Naresh (Ex.43). The evidence of plaintiff is consistent with his case in the plaint. PW 2 – Naresh (Ex.43) was one of the attesting witnesses to the sale deed dt. 12.5.2006 (Ex.31). He deposed that the defendant

No.1 had put his signature on the sale deed dt.12.5.2006 (Ex.31) in front of him. During the course of the evidence, the sale deed dt. 12.5.2006 (Exh.31) was shown to PW 2 – Naresh. He recognized the signatures of all. Though PW 2 – Naresh was cross examined at length, his evidence on the point of execution of the sale deed dt. 12.5.2006 (Ex.31) was not shattered.

16. The defendant No.1 has claimed that he is an illiterate person. But at the same time, he admitted that he can sign documents. However, the defendant No.1 refused to recognize his signatures on the sale deed dt. 12.5.2006 (Ex.31) and even on the W.S. (Ex.16). The defendant No.1 admitted that he has signed one register on 12.5.2006 which was ordinarily kept in the office of the Sub-Registrar. However, the defendant No.1 also did not deny his signatures on the notice/reply (Ex.36) and the Vakalatnama (Ex.5) which was filed before the learned Trial Court. Therefore, by exercising the power conferred by Section 73 of the Indian Evidence Act, 1872 this Court has compared the signatures of the defendant No.1 on the notice/reply dt. 29.9.2007 (Ex.36) and the Vakalatnama (Ex.5) of the defendant No.1 filed before the learned Trial Court with the signatures which appear on the sale deed dt.12.5.2006 (Ex.31) and the W.S. (Ex.17). This Court finds that the signatures on the above documents are one and the same. From the above, it is clear that the sale deed dt. 12.5.2006 (Ex.31) is signed by the defendant No.1. The conduct of the defendant No.1 in even denying his signature on the W.S. (Ex.17) which was filed on his behalf makes his case very doubtful and an adverse inference is required to be drawn against the defendant No.1. In any case, as stated above, had the case of the defendant No.1 been genuine he would not have waited for the plaintiff to first approach the Civil Court.
17. Apart from this, the fact that the defendant No.1 can sign documents shows that he is not an illiterate person. A person can sign only if he understand the letters. Another aspect of the matter needs to be looked into is that the sale deed dt. 12.5.2006 (Ex.31) bears the photograph of the defendant No.1 along with his signature. The said photograph was taken at the time of the execution of the sale deed. It is not shown by the defendant No.1 that his photograph was taken for any purpose other than for the execution of the sale deed dt. 12.5.2006 (Ex.31). From the above, it is clear that the entire defence put up by the defendant No.1 is nothing but an afterthought.

18. The allegations of misrepresentation and fraud alleged to have been committed by the plaintiff are also not substantiated in any manner. Therefore, it is clear that the sale deed dt. 12.5.2006 (Ex.31) is a valid document. As such, the plaintiff is the owner of the suit property by virtue of the sale deed dt. 12.5.2006 (Ex.31). Hence, Point No.1 is answered in the affirmative and Point No.3 is answered in the negative.”

Considering all these aspects, I am of the opinion that though the appellant made an attempt before this Court to submit that the substantial question of law is involved in the appeal namely, (A) Whether the learned Trial court and appellate court traverse beyond the pleadings (Counter-Claim) of the Defendant No.1 while recording its finding on the validity of Sale-Deed ?, there is nothing on record to say that the learned trial Court and the appellate Court traverse beyond pleadings of the defendant No.1 while recording the finding on the validity of the sale deed. The judgments and orders passed by the learned trial Court as well as the appellate Court are based on sound reasoning and proper appreciation of the evidence and material brought before the respective Courts.

The appeal thus being wholly meritless, deserves to be dismissed and the same is accordingly dismissed.

JUDGE

*rrg.