

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

SECOND APPEAL NO.500/2017

Pundlik @ Pramod Wamanrao Muneshwar ..vs.. Shriram Mangnaji Chaudhary

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

Court's or Judge's orders.

Mr. J. J. Chandurkar, Advocate for appellant.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 9, 2017

Heard Mr. J.J.Chandurkar, Advocate for
appellant.

The appeal is by original plaintiff. The suit for declaration and for cancellation of sale deed No.2304/2004 dated 29.10.2004 was dismissed by the learned trial Court vide judgment and decree dated 28.10.2014. The appeal carried by him was also dismissed on 22.04.2017. According to the plaintiff, he is working in the Forest Department whereas the defendant was having business of bore-well. They know each other. According to the plaintiff, he was in need of money for treatment of his wife's ailment. Therefore, he approached the defendant and demanded loan of Rs.1,25,000/- On the same day, a written agreement was executed in between the parties and it was agreed that the plaintiff will repay Rs.1,55,000/- along with interest to the defendant and thereafter on 29.10.2004, the sale deed was executed in respect of the suit property in favour of the defendant. Thus, according to the plaintiff, the sale deed dated 29.10.2004 was as a security for repayment of amount which was given in view of the agreement dated 28.10.2004.

It is also the case of the plaintiff that after five months of the agreement, he approached to the defendant with the loan amount and requested him to resale the suit property. However, the defendant avoided the same. Hence, on 24.12.2008, he went to the house of the defendant along with cheque of Rs.1,55,000/- drawn on State Bank of India, bearing No. 594253. However, the said cheque was not accepted. Therefore, the suit was filed.

The suit was contested by the defendant.

It is to be noted that though the agreement dated 28.10.2004 is there, the suit for cancelation of the sale deed dated 29.10.2004 was filed by the plaintiff as late as in the year 2010. Further, though it was the case of the plaintiff that he approached to the house of defendant along with the cheque and when he refused, it was open for the plaintiff to send the said cheque by registered post to the defendant. However, for the reasons best known to the plaintiff, no such step was taken.

What is important to note that the plaintiff is relying on the agreement Exh.-43. The plaintiff himself during the course of trial moved an application for appointment of the handwriting expert to verify the signature of the parties for the said agreement. The learned trial Court allowed the said application and Mr. Ulhas Athlaye was appointed as handwriting expert. He submitted his report Exh.-79 in which he categorically opined that the agreement dated 28.10.2004 Exh.-43 is not signed by the present defendant. Though the said report was against the plaintiff, for the reasons best known to the plaintiff, the

plaintiff failed to call the said hand writing expert to test the veracity of his opinion. Thus, it is clear that the agreement which contains resale was not signed by the defendant. Further there is variance in between the pleadings of the plaintiff and the recitals of the agreement Exh.-43.

As per Exh.-43, the loan amount was obtained by the plaintiff for the marriage of his daughter. However, in the pleading, a case is put forth before the Court that he obtained loan since he was in the need of the same for the treatment of his wife. All these facts were properly considered by both the Courts below. No substantial question of law is involved in the matter. The appeal is therefore rejected. No order as to costs.

JUDGE

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