

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

SECOND APPEAL NO.8 OF 2006

Kawadu Govindrao Phuse and ors

..vs..

Purushottam s/o Tulshiram Phuse

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

Court's or Judge's Order

Shri A.S. Bhendarkar, Counsel for the appellants.

Shri Nitin Vyawahare, Counsel for R-1.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 6, 2017.

1. Rather unfortunate situation is here that the second appeal filed in the year 2006 is coming for admission today, which is pending for various reasons. Even, today in the morning session, learned counsel Shri A.S. Bhendarkar for the appellants sought an adjournment. However, it was objected by learned counsel for the other side and, in my view, correctly.

2. The second appeal is filed by legal representatives of original defendants. The suit for possession of the suit property was filed by respondent/plaintiff. His suit was dismissed by the Trial Court and an appeal carried against the said decree of dismissal was allowed by the Lower Appellate Court and the decree of possession is granted. The Trial Court dismissed the suit on the ground that the plaintiff has failed to prove sale-deed dated 20.4.1970 (Exhibit 46) as in fact it was a

loan transaction. It is to be noted that till filing of the suit for possession in the year 1987, at no point of time the original defendant filed any proceeding for cancellation of sale-deed dated 20.4.1970 nor any counter claim was set up by him when the suit for possession was filed.

3. According to learned counsel for the appellants, the sale-deed was in fact a loan transaction and it was rightly observed by the Trial Court.

4. The Lower Appellate Court bestowed its thoughtful consideration on the said aspect as it could be seen and is reflected in paragraph No.10 of the Lower Appellate Court's Judgment.

5. Since there was no decree in favour of the present appellants that the sale-deed is required to be cancelled, in my view, the findings of facts recorded by the Lower Appellate Court cannot be disturbed. Further though the decree is granted in favour of the respondent/plaintiff in the year 1993, still original plaintiff is yet to enjoy fruits of the said decree.

6. Since there is no substantial question of law emerges in the present second appeal, the said is dismissed.

JUDGE

!! BRW !!

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