

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11288 OF 2018

ARVIND GOVIND ANNDATE
VERSUS
RUKHMANABAI SANJAY GORSE

...
Advocate for the Petitioner : Shri N. D. Sonavane

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 10th OCTOBER, 2018.

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PER COURT :

1. The petitioner/original defendant in RCS No. 323/2014 is aggrieved by the order dated 16/08/2018 passed by the Trial Court, by which, his application Exhibit 25 filed on 13/09/2017 praying for rejection of the plaint under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, has been rejected.

2. The learned Advocate for the petitioner/defendant has strenuously contended that there are no pleadings in the plaint which would indicate that a nominal sale deed was entered into between the plaintiff and the defendant. As the plaintiff claimed that he had taken loan from the defendant and that it

was agreed that the mortgage deed in the nature of a nominal sale deed, would finally lead to redemption of the mortgage if the plaintiff repays the entire loan amount to the defendant, these modalities must appear in the mortgage deed.

3. Reliance is placed upon the judgment of this Court in the matter of *Pushpa Aidan Kalantri and others Vs. Purushottam Champalalji Rathi, 2010 (2) Mh.L.J. 813.*

4. My attention is drawn to the pleadings in the plaint in support of the contention that nowhere in the plaint there are pleadings which would support the prayers put forth by the plaintiff. Unless specific conditions set out in the mortgage deed would indicate that the redemption clause was specifically agreed upon and that it was a nominal sale deed, the plaint has to be rejected under Order VII Rule 11 of the CPC.

5. I have considered the record available in the light of the submissions of the petitioner. It cannot be over looked that the plaint in an outcome of Mofussil pleadings. The pleadings

would indicate that the grounds are not ideally pleaded in the plaint. However, it is specifically mentioned in the plaint that the defendant has a business of extending loans and he is in the business of duping gullible farmers by taking over their agricultural lands on the basis of sale deeds. It is also pleaded that the defendant, though he is a doctor, is operating the business of extending loans, his wife is a political leader and taking advantage of the said circumstances, he has taken over several pieces of agricultural lands.

6. It is also mentioned that the sale deed dated 14/10/2003 is made for “गहाण स्वरूपी शर्त खरेदीचा दस्त” Though the land was valued at more than Rs.2 lakhs, since the plaintiff had taken a loan of only Rs. 1 lakh, the said document was executed. The Trial Court has recorded that the said document would have to be proved and after the recording of oral and documentary evidence, it can be conclusively assessed as to whether, the sale deed was clearly a document evidencing a sale transaction for otherwise.

7. In view of the law laid down by the Honourable Apex

Court in the matters of *Syed Yakoob V/s. K. S. Radhakrishnan, AIR 1964 SC 477* and *Surya Dev Rai Vs. Ram Chander Rai, AIR 2003 SC 3044*, unless the impugned order amounts to be grossly perverse or erroneous, no interference is called upon. It is in view of this position that I am not causing interference in the impugned order.

8. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-