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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

***SECOND APPEAL NO. 291 OF 2017
with
CIVIL APPLICATION NO. 1515 OF 2016***

Mrs. Vijaya Prakash Kadam. ...Appellant.

V/s.

Smt. Santosh Ramchandra Shinde & Anr. ... Respondents.

Ms. Manjiri Parasnis for the Appellant/Applicant.

CORAM : N.M. Jamdar, J.

DATE : 23 January, 2018.

Oral Order :-

The Appellant – Plaintiff has challenged the judgments and orders passed by the learned Civil Judge, Junior Division, Satara and the learned District Judge, Satara dismissing the Suit and Appeal filed by the Appellant.

2. The Appellant filed a suit seeking specific performance of an agreement dated 20 August 1996 stated to be executed by the Respondents – Defendants in favour of her. According to the Appellant – Plaintiff, the Respondents had agreed to sale the suit

land to her Rs.65,000/- and Rs.60,000/- were given and inspite of calling upon the Respondents to execute the sale deed, it was not executed. Both the Courts concurrently held that the transaction was a loan transaction and the agreement was towards security for the loan advanced.

3. That the agreement was executed is not in dispute so also the fact that the amount was given to the Respondents, the question before the Court, for which issue was framed, was to whether it was a loan transaction. The Appellant examined a witness viz. Suresh Janardan Kadam. This witness, in unequivocal terms in the cross-examination admitted that it was true that the financial condition of the Respondents – Defendants was not good. He also accepted that in the village, it was a practice to keep the land as a collateral, if loan was to be obtained. He admitted that the transaction was a loan transaction and that since the Respondents received Rs.60,000/- that the property was given to them by the Appellant. The entire case of the Appellant was falsified by her own witness.

4. The learned District Judge was correct in relying on that clear admission of the witness of the Appellant what was in question was a loan transaction. The learned Counsel for the Appellant submitted that this was not specifically stated so in the written statement. Both the Courts have framed the issue as to whether the

transaction in question was a loan transaction. Therefore, the admission of the witness of the Plaintiff was most material.

5. There is no perversity in the assessment of evidence by both the Courts if they have relied on this admission of the witness. As regard return of the amount, no such prayer was made by the Appellant – Plaintiff, even otherwise both the Courts have held that what was paid was not towards consideration but as a loan amount.

6. In the circumstances, no question of law arises. The Second Appeal is dismissed. Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)