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

**SECOND APPEAL (ST) NO.18744 OF 2018.
WITH
CIVIL APPLICATION NO.825 OF 2018
IN
SECOND APPEAL (ST) NO.18744 OF 2018.**

Sham Bhanudas Kurlekar	...	Applicant
V/s.		
Vinayak Kondiram Kurlekar and others	...	Respondents

Mr. Rushikesh S. Kale, for the appellant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J

DATE : 9th JULY, 2018.

P.C. :

- 1] Heard learned counsel for the appellant
- 2] This Second Appeal is directed against the judgment and decree dated 9.4.2018, passed by District Judge 2, Solapur, thereby dismissing Regular Civil Appeal No.63 of 2013, which was preferred against the judgment and decree dated 29.8.2012, passed by the Joint Civil Judge Senior Division, Solapur, in Regular Civil Suit No.1024 of 2012.
- 3] Appellant is the original defendant No.1; whereas respondent No.1 is the original plaintiff and respondent No.2 is the

original defendant No.2. The suit was filed by respondent No.1 herein, for getting possession of the suit property, contending inter alia that the defendant No.1 has sold the suit property to defendant No.2 on 12.12.2005, for consideration of Rs.3,30,000/-. Accordingly defendant No.2, became the owner of the suit property. Thereafter defendant No.2 sold the said suit property to him, for consideration of Rs.4,20,000/-. For payment of consideration amount, he has availed the loan by mortgaging the suit property with Industrial Development Bank of India, Sakhar Peth Branch, Solapur. After the sale deed was executed, his name was mutated in the revenue record. Thus, he has become the absolute owner of the said property. However, the possession of the suit property continued to be with defendant No.1 on his request as he has no other alternative accommodation and hence, he was allowed to remain in possession of the suit property.

4] Now, as the plaintiff, requires possession of the suit property and therefore, after giving notice dated 6.3.2008 to defendant No.1, has filed the present suit for possession.

5] The appellant/defendant No.1 resisted the suit contending inter alia that he has purchased the suit property on 12.12.2005, for consideration of Rs.3,75,000/-. Since then he alongwith his family members are residing in the suit property. It is contended by him that plaintiff is his real cousin and defendant No.2 is serving in police

department. Both of them are close friends. Both of them jointly do money lending business. It was further stated by him that after purchasing the suit property, as he was in need of money for his business, therefore, he demanded an amount of Rs.1,00,000/- from defendant No.2. The Plaintiff was the mediator in the said transaction. The defendant No.2 gave the said amount with interest and he also asked the defendant No.1 to execute a nominal sale deed in respect of suit property in his favour for security purpose. It was agreed between defendant No.1 and defendant No.2 that after repayment of entire loan amount with interest to defendant No.2, he would re-convey the suit property to him. Keeping trust, on defendant No.2, defendant No.1 executed a nominal sale deed in respect of the suit property in favour of defendant No.2 on 19.6.2006.

6] Thereafter, defendant No. 1, has paid entire loan amount to defendant No.2 on 27.2.2008 and asked the defendant No.2 to re-convey the suit property in his favour. Defendant No.2, however, avoided to do so. Thus, in short, it is the contention of defendant No.1 that the sale deed which was executed in favour of defendant No.2 was never intended to be acted upon. The plaintiff, by joining hands with defendant No.2, in order to grab the suit property, has filed this false suit and therefore, the suit needs to be dismissed.

7] Defendant No.2 admitted the claim of the plaintiff and

prayed for decree of the suit.

8] The trial Court has after taking into consideration the rival pleadings of the parties, framed necessary issues. In support of their respective claims, the plaintiff and defendant No.1 examined themselves.

9] On appreciation of this evidence, the trial Court came to the conclusion that the document, as it is, is required to be read and on its reading, it is clear that, it is a transaction of sale deed. Defendant No.1 has failed to prove that it was money lending transaction and sale deed was executed merely as security. The trial Court, has further held that the burden to prove that it was nominal or hollow sale deed was clearly on the defendant No.1, which he has failed to discharge and therefore, the trial Court decreed the suit.

10] In the first appeal, the Appellate Court confirmed this finding of fact, relying on the documentary evidence, like sale deed and in the absence of any cogent evidence on the part of defendant No.1 to show that it was loan transaction held that defendant No.1 has failed to prove that the sale deed was executed only as security, and dismissed the appeal.

11] In the Second Appeal, no substantial question of law as such, is raised. The entire case is based on appreciation of evidence and both the Courts have arrived at the concurrent finding which

finding of fact cannot, be in any way called as perverse. Even otherwise on re-appreciation of the entire evidence on record, the view taken by the trial Court and confirmed by the Appellate Court cannot be disturbed as the case is based on documentary evidence and to prove that it was hollow or nominal sale deed, burden was upon defendant No.1, which he has failed to discharge. Merely saying that plaintiff and defendant No.2 have cheated him or it was transaction of security of loan is not sufficient.

12] In such situation, in the Second Appeal, this concurrent finding of fact cannot be disturbed.

13] As no substantial question of law is raised, the Second Appeal, therefore, stands dismissed.

14] In view of dismissal of Appeal, Civil Application No.825 of 2018 becomes infructuous and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]