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

**SECOND APPEAL NO.424 OF 2017
WITH
CIVIL APPLICATION NO.816 OF 2017
IN
SECOND APPEAL NO.424 OF 2017.**

Janabai Rau Khartode V/s. Sanjay Maruti Mhaske and anr	... Appellant. ... Respondents
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Mr. Rupesh A. Zade, for Appellant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 5th JUNE, 2018.

P.C. :

- 1] Heard learned counsel for appellant.
- 2] Appellant has filed suit for perpetual injunction in respect of portion of land admeasuring 16R and 15R out of Gat No.1103 situate at village Patas, contending inter alia that Rauba has mortgaged the said land by conditional sale deeds dated 8.10.1984 and 12.10.1984, in favour of respondents for consideration of Rs.3,000/- and Rs.3,500/-, respectively.
- 3] It is was further stated that the entire amount of consideration has been refunded back by Rauba within two years.

However, respondent failed to return the lands in favour of Rauba. Thereafter, Rauba, in the partition, has transferred the said property in the name of appellant. Appellant's name is also appearing in the revenue record and she is in possession thereof.

4] Both the trial Court and the Appellate Court have categorically held that there is no evidence OF Rauba, who was very much alive, to show that these sale deeds were not out and out sale and were in the nature of mortgage. Both the trial Court and Appellate Court had come to finding on the basis of evidence on record to hold that there is no evidence to show that if appellant has repaid the entire amount, details thereof are not given either in the plaint or in the oral evidence. Moreover, if the amount was paid within two years , there is no explanation as to why the suit was filed in the year 2008 that is after lapse of about 20 years from the alleged repayment.

5] Both the trial Court and the Appellate Court, had therefore, on the basis of documentary evidence like sale deeds and the oral evidence of the parties, categorically held that it was a transaction of out and out sale and in view thereof, appellant has no right to get relief of injunction. This finding is based on appreciation of oral and documentary evidence on record and there is no substantial question of law involved.

6] The appeal, therefore, stands dismissed.

7] As the appeal itself has been dismissed, Civil Application No.816 of 2017 becomes infructuous and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]