

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

SECOND APPEAL NO.195 OF 2017

Sevakram Narayan Sarode Vs. Ashok Sampatrao Dongarkar

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

Court's or Judge's orders.

Shri A.B. Mirza, Advocate for Appellant.
Shri R.G. Kavimandan Advocate for Respondent.

CORAM: A.S. CHANDURKAR, J.

DATE: 21-06-2018

The appellant is the original defendant who is aggrieved by the judgment of the Appellate Court passed in Regular Civil Appeal No. 07/2007, whereby the suit filed by the respondent herein praying that the defendant be directed to have the sale-deed dated 16/03/1999 registered has been decreed.

It is the case of the respondent that on 16/03/1999 by paying an amount of Rs. 6,000/- (Rs. Six Thousand Only), the suit property was sold to the plaintiff. Due to non-availability of stamp papers at that time the sale deed could not be registered. The plaintiff approached the defendant on various occasions but the sale-deed was not got executed by him. The plaintiff was in fact put in possession and therefore he was

constrained to file aforesaid suit seeking necessary relief. In the written statement, it was pleaded that the suit property was not sold to the plaintiff. The agreement in question was denied and it was stated that the premises were given to the plaintiff only for temporary occupation.

The trial Court dismissed the suit holding that the agreement in question was void. The appellate Court held that the transaction was completed and granted relief by directing the defendant to execute the sale-deed in favour of the plaintiff. The suit was accordingly decreed.

The learned Counsel for the appellant submitted that the appellate Court erred in decreeing the suit inasmuch as the transaction in question that had taken place on 16/03/1999 could not be said to be a sale transaction. Such transaction was required to be compulsory registered and the agreement in question at Exhibit No.47 was not registered. That document did not confer any title on the plaintiff and therefore the suit was liable to be dismissed. In support of his submissions, the learned Counsel placed reliance on the decision in the case of ***Omprakash v/s Laxminarayan*** and others reported **2014 (1) SCC 618**.

The learned Counsel for the respondent supported the impugned judgment. He submitted that the appellate Court rightly decreed the suit by relying upon the decision in the case of *S.Kaladevi v/s V.R. Somasundaram and others* reported in **2010 (5) Mh.L.J. 320**. The transaction of sale was completed and the plaintiff was put in possession. Hence no interference was called for.

I have heard the learned Counsel for the parties at length and I have gone through the impugned judgment. Insofar as the execution of the document at Exhibit No.47 is concerned, the finding recorded is that such document had been duly executed. The defendant did not deny his signature on the said document and the plaintiff was also put in possession. The appellate Court while considering the decision of the Hon'ble Supreme Court in *S.Kaladevi (supra)* has observed that if the transaction of sale is on the basis of an unregistered document, the same can be admitted in evidence to prove an agreement of sale. The aforesaid decision of the Hon'ble Supreme Court applies to the facts of the present case and the decree passed by the appellate Court is therefore sustainable. The direction issued to the defendant to execute the sale-deed in favour of the

plaintiff is the only conclusion that can be drawn in the light of the evidence on record. It was rightly held that the trial Court was not justified in declaring that the said document was null and void.

In view of the aforesaid, there is no case made out to interfere with the judgment of the appellate Court.

The Second Appeal is therefore dismissed with no order as to costs.

JUDGE

RKN