

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

SECOND APPEAL NO.35 OF 2019

Ram @ Rameshwar Balasaheb Kopner,
Age 28 yrs., Occ. Agri.,
R/o Kopnerwadi U/v Dhaswadi,
Tq. Ahmedpur, Dist. Latur.

... **Appellant.**

... **Versus** ...

Vithal Baburao Khandekar,
Age 68 yrs., Occ. Agri.,
R/o Dhaswadi,
Tq. Ahmedpur, Dist. Latur.

... **Respondent.**

...

Mr. Shrikant B. Madde, Advocate for the appellant

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12th FEBRUARY, 2019

JUDGMENT :

1 Present appeal has been filed by the original defendant, who intends to challenge the Judgment and Decree passed by learned Adhoc District Judge-1, Ahmedpur, Dist. Latur in Regular Civil Appeal No.55/2015

dated 02.11.2018. The said appeal was filed challenging the Judgment and Decree passed in R.C.S. No.268/2017 passed by Joint Civil Judge Junior Division, Ahmedpur, Dist. Latur on 18.08.2015.

2 Present respondent-original plaintiff had come with the case that he is a near relative of defendant. He was in need of money and therefore he decided to sell his land. He had conversation with defendant and then it was decided that he would sale out the suit property for a consideration of Rs.3,45,000/-. It was also decided that at the time of sale deed, amount of Rs.1,50,000/- would be given and the remaining amount would be paid in December, 2012. It was also decided that the possession of the suit property would be given to the defendant and if the defendant fails to pay the remaining amount of Rs.1,95,000/- to the plaintiff, then it would be recovered by the plaintiff along with interest. It is also stated that, in that event, the sale deed would be cancelled. After such discussion when the contract was completed, the sale deed was executed on 22.03.2012. At that time, plaintiff accepted amount of Rs.1,50,000/- from the defendant. On the same day, the defendant executed agreement on a stamp paper of Rs.100/- in presence of witnesses, whereby he promised to pay amount of Rs.1,95,000/-.

After the sale deed was executed, defendant got his name mutated to the suit property. Plaintiff asked defendant to pay the remaining amount of Rs.1,95,000/-, however, defendant avoided on one or the other pretext till April, 2012. Thereafter, he issued legal notice through Advocate on 02.05.2013. There was no response and therefore he filed the suit.

3 Defendant resisted the claim by filing written statement. It has been denied that he had agreed to pay consideration of Rs.3,45,000/-. He has also denied that any separate agreement was executed on a stamp paper of Rs.100/- promising that he would pay amount of Rs.1,95,000/-. It is stated that he purchased the suit property from plaintiff for a consideration of Rs.1,50,000/- on 22.03.2012 and since then plaintiff has no concerned with the suit property.

4 Taking into consideration these rival contentions issues came to be framed and parties have led oral as well as documentary evidence. After considering the evidence on record, learned Trial Court has dismissed the suit.

5 The original plaintiff challenged the said Judgment and Decree passed by the learned Trial Court before the First Appellate Court

i.e. District Court, Ahmedpur. After hearing both sides, the learned Adhoc District Judge-1, Ahmedpur allowed the appeal by setting aside the Judgment and Decree passed by the Trial Court. Defendant has been directed to pay amount of Rs.1,95,000/- together with interest @ 6% per annum from the date of institution of the suit till actual realization of the entire amount. Now, the original defendant intends to challenge the said Judgment and Decree in this Second Appeal.

6 Heard learned Advocate appearing for the appellant. He has made available the documents as well as evidence of the parties and Judgment before the Trial Court. Taking into consideration his submissions and the facts as well as evidence on record, it is not necessary to issue any notice to the respondent.

7 It has been argued on behalf of the appellant that the defendant has totally denied the execution of the separate agreement which was, in fact, alleged to be executed after registration of the sale deed. Defendant has denied his signature on the so called document Exh.23. Perusal of the sale deed would show that the property was purchased for a consideration of Rs.1,50,000/- only. Under the said circumstance, there was no question of recovery of any amount from the

defendant. He also submitted that the suit was not maintainable in the said form, wherein even the alternative prayers were made in respect of the cancellation of the sale deed. The said agreement was not at all properly proved by the plaintiff. The learned Trial Court had properly appreciated the evidence and rightly dismissed the suit. There was absolutely no mention of remaining amount to be paid, after a particular interval, by the defendant, in the sale deed, which is admittedly executed by the plaintiff. Therefore, substantial questions of law are arising in this appeal.

8 It is to be noted that the plaintiff had come with the specific case that when he decided to sell the suit land to the defendant, after negotiations it was held that, the suit land would be sold for a consideration of Rs.3,45,000/-, but then it was decided that the sale deed would be for an amount of Rs.1,50,000/- only. It was also decided that the remaining amount would be paid by the defendant by the end of December, 2012. Accordingly, the sale deed was executed, in which consideration amount was shown as Rs.1,50,000/- and by way of another document, which was on the stamp paper of Rs.100/-, he agreed in presence of panchas to pay the remaining amount of Rs.1,95,000/-. It is

to be noted that in order to prove the said contention, the sale deed as well as agreement Exh.23 has been produced. Further, in order to prove the said document, the attesting witness Dnyanoba Chandewad has been examined. Perusal of the evidence of the witness would show that the price of the suit land was fixed at Rs.3,45,000/-. According to him, the agreement was written first, than the sale deed. Though learned Advocate appearing for the appellant has pointed out Exh.23 stating that even the registration number has been mentioned, however, Exh.23 gives day book number and not the final registration number. Even if for the sake of argument it is accepted that the agreement was executed after the sale deed, yet it is to be noted that it was executed on the same day i.e. on 22.03.2012. The testimony of the PW Dnyanoba has not been shattered at all. Rather it has been extracted from him in the cross examination, as to who was present when Exh.23 was got executed and thereafter except denial there is nothing. There was no attempt on the part of the defendant to send Exh.23 for Handwriting Expert's opinion, if he was interested in really denying the signature appearing on Exh.23. Further, he has also not examined any other person who was present at the time of the transaction. In fact, there were five witnesses, who have

signed Exh.23, as a witness. As regards their signatures on Exh.23 is concerned, the defendant is claiming ignorance. Further, the conduct is also required to be considered. Plaintiff had issued notice prior to the institution of the suit claiming the recovery of amount. The said notice has not been replied.

9 Section 54 of the Transfer of Property Act defines Sale as sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised. Here, as per the plaintiff, part amount was paid i.e. Rs.1,50,000/- and amount of Rs.1,95,000/- was promised to be paid. Merely because it is not so specifically mentioned in sale deed, it does not take away the right of plaintiff to recover the unpaid amount. As regards the part of the consideration amount, which was promised to be paid, there was a separate agreement Exh.23, which has been duly proved by the plaintiff. Section 55(4)B entitles seller to have legal recourse for the amount of purchased money, or any part thereof remaining unpaid and for interest on such amount, or part. Therefore, the suit was definitely maintainable. The learned Trial Court has not appreciated the evidence properly. In fact, in a very cryptic Judgment without considering the evidence on record, either oral or written and

also the provisions of law, arrived at a conclusion that the plaintiff has failed to prove everything. The learned First Appellate Court has considered the oral as well as written as well as law points properly. Under such circumstance, no substantial question of law is made out to admit the appeal. Even as regards the rate of interest is concerned, is only awarded @ 6% per annum in view of Section 34 of the Code of Civil Procedure, 1908. Therefore, the appeal is dismissed, as no substantial question of law is pointed out. Pending Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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