

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**SECOND APPEAL NO.739 OF 2017
WITH
CA/ 7611 /2018 IN SA/739/2017
WITH
CA/7170/ 2019 IN SA/739/2017**

Sonaji s/o Daji Dhole (Deceased)
Through L.Rs.

1. Tanabai w/o Sonaji Dhole,
Age 87 years, Occupation Household,
R/o. Dhole Wasti, Imampur Road,
Tq. Dist. Beed.
2. Parubai w/o Chintaman Jadhav,
Age 67 years, Occupation Household,
R/o Barshi Naka, Beed.
3. Babasaheb s/o Sonaji Dhole,
Age 67 years, Occupation Agriculture,
R/o Dhole Wasti, Imampur Road, Beed
Tq. Dist. Beed.
4. Yadav s/o Sonaji Dhole,
Age 55 years, Occupation Agriculture,
R/o As above.
5. Vishnu s/o Sonaji Dhole,
Age 53 years, Occupation Agriculture,
R/o As above.
6. Jagan s/o Sonaji Dhole,
Age 50 years, Occupation Agriculture,
R/o As above.

...Appellants.
(Orig.Plaintiffs)

VERSUS

Murlidhar s/o Yeshwant Kulkarni,
Age 72 years, Occupation Agriculture,
R/o Krantinagar, Beed Tq.Dist.Beed.

...Respondent.
(Ori.Defendant)

....

Mr. A. M. Gholap, Advocate for Appellants.
Respondent served.

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
08-07-2019.**

**Date of Pronouncing The Order :
13-08-2019.**

ORDER :

1. Present appeal has been filed by the original plaintiff challenging the concurrent Judgment and decree passed in Regular Civil Appeal No.72 of 2014, by learned Ad-hoc District Judge-2, Beed, dated 11-04-2017, thereby confirming the Judgment and decree passed by learned Joint Civil Judge, Senior Division, Beed in Regular Civil Suit No.58 of 2012 (Old Special Civil Suit No.24 of 2009) dated 22-04-2014, by which his suit for declaration of ownership and perpetual injunction came to be dismissed.

2. The factual matrix leading to the appeal are, the plaintiff contended that he is the owner of suit property i.e. agricultural land bearing Survey No.18/Kh/3, admeasuring 1 H 73 R situated at Taraf Deshmukh, Beed District. It was contended that, there was marriage of his grand-daughter in the year 1999, for which he was required to spend substantial amount. He was in need of money to mitigate those expenses. Defendant is a money-lender and therefore plaintiff had approached him in the month of August 2001

requesting him to lend amount of Rs.1,00,000/-. Defendant agreed but put condition that, he will have to execute a nominal sale deed. Accordingly plaintiff executed the sale deed on 08-08-2001 in respect of the suit property. It is stated that, it was a nominal sale deed towards security of the money-lending transaction. It was decided between them that, defendant will not get possession on the strength of the said sale deed and the consideration would be shown as Rs.2,01,000/-. According to the plaintiff, he repaid the entire amount to defendant in January 2009 and then asked defendant to cancel the said sale deed. Thereupon the defendant asked additional amount of Rs.3,00,000/-. When plaintiff did not pay the same, defendant started the action for getting his name mutated in the revenue record. Mutation entry No.1288 was effected behind his back and when the defendant refused to cancel the said document and tried to grab the land, he has filed the suit.

3. Defendant resisted the claim by filing written statement. He denied that, plaintiff is still the owner of the property. He has stated that, he has become the owner of the property by virtue of sale deed dated 08-08-2001, which has been registered at Serial No.2717. It is stated that, the proposal to sell the land was given by the plaintiff and accordingly the price was fixed @ of Rs.70,000/- per acre. He denied that, it was a money-lending transaction.

4. Taking into consideration the rival contentions, issues were framed. Parties have led oral as well as documentary evidence. Taking into consideration the said evidence and hearing both sides, the learned trial Court has held that, plaintiff has failed to prove that it was a money-lending transaction and he had taken loan of Rs.1,00,000/- only. Plaintiff has further failed to prove that, he has repaid the said amount along with interest @ of 10 % per annum. It is also held that, the plaintiff has failed to prove that, defendant had agreed to cancel the sale deed upon payment of amount. It is held that, plaintiff is not entitled to get the relief of declaration as well as injunction as prayed.

5. As aforesaid plaintiff approached the learned Appellate Court and after hearing both sides, the learned Appellate Court has confirmed the decree passed by the learned Trial Court, hence this second appeal.

6. Heard learned advocate Mr. A. M. Gholap for the appellant. Perused the photocopy of the documents on the record of the Trial Court, so also the copy of the paper book made available.

7. It has been vehemently submitted on behalf of the appellant that, the learned Courts below have not considered the evidence in proper perspective. The plaintiff had specifically come with a case that, though he had executed the sale deed, the real transaction was

different, and therefore, in order to arrive at the intention of the parties, the circumstances ought to have been seen. In this case, the vendor has born the expenses of the sale deed which general does not occur. No consideration was paid before P.W.2. Defendant also admitted in his evidence that, he has no knowledge about the boundaries of the property allegedly purchased by him. These circumstances showed that, the transaction was not out and out sale. Plaintiff had come with a case that, there was a separate oral agreement, and therefore, the admissions given by the witnesses of the defendant ought to have been considered. The possession of the suit land is with plaintiff. The adjoining owners who have been examined as witness also corroborate the said fact. The suit notice was refused by the defendant. Under such circumstance, both the Courts ought to have held that, the said transaction was loan transaction. Plaintiff has specifically stated that, he has repaid the amount, and therefore, the declaration and injunction as prayed ought to have been granted. Hence, the substantial questions of law are arising in this case as the findings given by both the Courts are perverse.

8. At the outset it can be seen from the bare perusal of the pleadings itself that, the plaintiff had the knowledge that the document which he has executed is 'sale deed'. Therefore, for cancellation of that sale deed, he ought to have filed the suit within

limitation. Here the sale deed dated 08-08-2001 is prayed to be cancelled on 18-03-2009. No doubt both the Courts have not framed the issue regarding limitation but the apparent facts to that effect are required to be noted.

9. Secondly the document which has been executed i.e. the sale deed is registered instrument, and therefore, there is presumption in respect of the same. Plaintiff has not stated that, he had ever raised any objection before the Sub-Registrar at the time registration of the document contending that, he has not received the said amount which has been stated in the sale deed. Merely the witness examined by the plaintiff now says that, amount was not paid in his presence, cannot be considered in favour of plaintiff taking into consideration the recitals of the document itself. In the document it is stated that, " भरणा रक्कम रुपये २,०१,०००/- दोन लक्ष एक हजार रुपये या पुर्विच तुम्हा पासुन नगदी रोख घेउन पावलो. भरण्या विषयी तक्रार नाही." Therefore, the said circumstance which learned advocate for the appellant wants to canvass that, consideration was not paid in presence of P.W.2 cannot be taken as one of the circumstance stating that the said transaction was of different nature than the sale.

10. The third fact that is required to be considered is that, the plaintiff has not adduced any strong, cogent and material evidence

to prove that he has paid the entire amount as per his own contention to the defendant. When according to him he had taken that loan in August 2001 then it is hard to believe that, he could have been allowed by the defendant to repay the said amount till January 2009. It is impracticable that, amount of Rs.1,00,000/- would have been allowed to be repaid after a period of 08 years, that too without any interest.

11. One more aspect that is required to be considered is that, plaintiff is not giving any cogent reason as to why he did not convey to the defendant that, instead of sale deed, they would execute the document containing real transaction. Further when he comes with a case that, there was a separate oral agreement then he has to give an explanation as to why he did not consider that the said separate agreement should also be reduced into writing in presence of some witnesses. Therefore, the conduct of the plaintiff does not appear to be of a prudent man. Those circumstances which have been stated by the learned advocate for the appellant to canvass that, there was a different transaction than the sale transaction, are without merit taking into consideration the conduct of the parties. Merely because the defendant's witness was not able to tell the boundaries, that does not mean that, the transaction which is a registered sale document, was not genuine transaction.

12. Both the Courts below have considered each and every aspect and angle in the evidence, and therefore, there appears to be no substance in the argument by the appellant. Framing of substantial question of law is *sine qua non* for entertaining any second appeal under Section 100 of Code of Civil Procedure. Taking into consideration the above said facts and from the reasons given by both the Courts below ; no substantial question of law is arising in this case. Under such circumstance, the second appeal stands disposed of as **not admitted**. Pending civil applications stand disposed of accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.