

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2842 OF 2018

1. Mallinath Kashinath Patil,
Age 60 years, Occ. Agri.,
R/o Achler, Tq. Lohara (B),
District Osmanabad.
2. Bhimashankar Iranna Patil,
Age 55 years, Occ. Agri.,
R/o as above.

... APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai.
2. Vyankat S/o Narayan Vibhute,
Age 40 years, Occ. Service as
Co-operative Officer Grade-II,
In the office of Assistant Registrar
Co-operative Societies, Lohara,
Tal. Lohara, Dist. Osmanabad.
3. The Police Inspector,
Police Station, Murum,
Tal, Lohara, Dist. Osmanabad.

... RESPONDENTS

...
Mr. S. S. Thombre, Advocate for Applicants.
Mr. D. R. Kale, APP for Respondent Nos.1 & 3.

...

WITH**CRIMINAL APPLICATION NO. 3541 OF 2018**IN**CRIMINAL APPLICATION NO. 2842 OF 2018**

Pramilabai w/o Annarao Patil,
 Age 66 years, Occ. Household,
 R/o. Achler, Tq. Lohara(B),
 Dist. Osmanabad.

... APPLICANT**VERSUS**

1. Mallinath Kashinath Patil,
 Age 60 years, Occ. Agri.,
 R/o Achler, Tq. Lohara (B),
 District Osmanabad.
2. Bhimashankar Iranna Patil,
 Age 55 years, Occ. Agri.,
 R/o Achler, Tq. Lohara (B),
 District Osmanabad.
3. The State of Maharashtra,
 Through Principal Secretary,
 Home Department,
 Mantralaya, Mumbai.
4. Vyankat S/o Narayan Vibhute,
 Age 40 years, Occ. Service as
 Co-operative Officer Grade-II,
 In the office of Assistant Registrar,
 Co-operative Societies, Lohara,
 Tal. Lohara, Dist. Osmanabad.
5. The Police Inspector,
 Police Station, Murum,
 Tq, Lohara, Dist. Osmanabad.

... RESPONDENTS

...
 Mr. R. V. Naiknaware, Advocate for Applicant.
 Mr. S. S. Thombre, Advocate for Respondent Nos.1 & 2.
 Mr. D. R. Kale, APP for Respondent Nos.3 & 5.
 ...

CORAM : **T. V. NALAWADE &
K. K. SONAWANE, JJ.**

DATE : 26th July, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The first proceeding is filed for relief of quashing of FIR No.135 of 2018, registered with Murum Police Station, Taluka Lohara, District Osmanabad, for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014. The crime is registered on the basis of report given by the Officer of Co-operative Department viz. Respondent No.2, but that report was given after making inquiry of the complaint made by one Pramilabai Patil against the present Applicants. Pramilabai Patil has filed Criminal Application No.3541 of 2018 for intervention. As on the basis of her complaint the Co-operative Department gave FIR, the learned counsel for Pramilabai Patil was allowed to argue in the matter to oppose the first proceeding.

3 In the FIR, Pramilabai has made allegations that the Applicants are doing money lending business illegally. It is her contention that her husband was missing from prior to 2002 and as she was in need of money, she had taken loan from the Applicants. It is her contention that she had agreed to pay interest at the rate of 8% per annum and by way of security, she had executed some documents in respect of land Gat No.819 to the extent of 81 Ares and land Gat No.115 to the extent of 2 Acre 22 Ares. It is her contention that there was an agreement to make the payment of loan with interest by the informant and after that both the lands were to be returned by the Applicants.

4 It is the contention of Pramilabai that her sister Ratnabai had filed suit for partition against her. The said suit came to be dismissed. It is contended that after dismissal of said suit, Applicants applied to the revenue authority to mutate their names in the revenue record of the aforesaid lands. It is contended that she objected to it as the lands were given only by security. It is contended that her signatures were obtained on the sale-deeds by deceiving her by the

Applicants and she had no intention to sell the lands. It is her contention that the lands are still in her possession. It is her contention that she has given these lands to other persons for cultivation on *Batai* basis.

5 Due to these allegations, the first informant made inquiry with the neighbouring land holders and then gave report against the Applicants.

6 It is not disputed that the sale-deeds came to be executed in respect of both the lands in the year 2002. There is a copy of judgment delivered in Special Civil Suit No.27 of 2004 by the Civil Judge Senior Division, Omerga on 23rd July, 2007. These documents show that complainant, Pramilabai had appeared in the suit, which was filed by Ratnabai. She had contended that she has executed the sale-deeds in favour of present Applicants (Defendant Nos.2 and 3 in the suit) and possession was delivered to them by her. The applications moved for recording their names in the revenue record were pending. The present Applicants had filed written statement on the basis of aforesaid sale-deeds and they had contended that the

possession was with them. Suit filed by Ratnabai for partition came to be dismissed. There is a copy of decree of Regular Civil Suit No.39 of 1999, which was filed by present Applicants against Pramilabai and Ratnabai. This suit of permanent injunction was decreed in favour of present Applicants and relief of permanent injunction was granted against Pramilabai and Ratnabai by decision dated 14th July, 2004. Though the suit was decreed *ex-parte*, the fact remains that the suit was filed in the year 1999 and this suit was pending when Special Civil Suit No.27 of 2004 was filed by Ratnabai on 22nd August, 2002. Ratnabai new that the present Applicants had purchased the lands from Pramilabai and that is why the Applicants were made party defendants in the said suit.

7 This Court made a query and asked the learned APP to show as to whether any other transactions were made by the Applicants with other persons and other persons had similar grievance. The learned APP submitted that there is no such record available. Though in the papers there are documents written on general stamp of 100 denomination and titled as *Batai Patra*, those documents can be of no use as the nature of documents shows that

amount of Rs.5,00,000/- was taken by Pramilabai from person like Hirakant for giving two lands in the year 2011 and 2017. When there is decision of Civil Court of aforesaid nature and when in the past Pramilabai had given admissions of aforesaid nature in Civil Court, at present, it is not possible to infer that the transactions were of security nature and the Applicants got executed the documents for money lending business. The aforesaid two sale-deeds of the year 2002 were never challenged and period of 17 years has expired from the date of execution of two sale-deeds. There is no revenue record showing that some other persons like the persons cultivating on *Batai* basis were in possession. Further, the revenue record needs to be given priority in such cases and officers of Co-operative Department are not expected to make independent inquiry about the possession of land. Due to these circumstances, this Court holds that no case of illegal money lending business is made out by aforesaid allegations and relief needs to be granted to the Applicants. In the result, the following order is passed:

ORDER

- I. Both the applications are allowed.

- II. The Applicant in Criminal Application No.3541 of 2018 is allowed to intervene.
- III. In Criminal Application No.2842 of 2018, relief is granted in terms of prayer clause (B).
- IV. Rule is made absolute in those terms.

[K. K. SONAWANE, J.]

[T. V. NALAWADE, J.]

ndm