

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

SECOND APPEAL NO. 212 OF 2019

Shivaji Rau Pawar. ..Appellant.

v/s.

Rama Chandru Mahur (Waghmare) ..Respondent.

Mr. Kuldeep U. Nikam, advocate for appellant

Mr. Yuvraj P. Narvankar, advocate for respondent.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : DECEMBER 10, 2019.

P. C. :

1 The appellant herein impugns Judgment and Order dated 6/1/2017 passed by learned District Judge, Sangli in Regular Civil Appeal No. 215 of 2010 thereby confirming Judgment and Order dated 1/7/2010 passed by learned Civil Judge Junior Division, Palus in Regular Civil Suit No. 300 of 2008.

2 The Respondent/defendant herein is the original plaintiff in RCS No. 300 of 2008, wherein there was specific prayer for redemption of mortgage deed executed between the parties on 21st May, 1982. Substantial question raised by the the appellant is that the said deed would be an additional sale deed since the plaintiff had failed to pay the amount within the

Talwalkar

stipulated period of 20 years. The document at Exh. 42 is placed on record by way of corroborative evidence. The defendant had substantiated that since the plaintiff had failed to abide by the redemption schedule, the defendant has become absolute owner of the said property. The document is admitted by both the parties mainly because the plaintiff relies upon the said document. Learned Counsel for the respondent submits that it cannot be treated as simplicitor mortgage by conditional sale because after lapse of 20 years, the appellant would become an exclusive owner of the property by way of sale deed.

3 The learned Counsel for the appellant has submitted that it would be necessary to consider the intention of the parties and one cannot rely upon it as a simplicitor mortgage deed. In that view of the matter, the learned Counsel has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Dharmaji Shankar Shinde v/s. Rajaram Shripad Joshi(dead) through LRs.** reported in 2019 (5) ABR page 84.

4 In the present case, the said judgment would have no relevance in view of the fact that before expiry of 15 years, the appellant herein had offered an amount of Rs. 15,000/- to rescind the mortgage deed and the said issue has been discussed by both the courts below. In fact, intention of the appellant

would be clear that he also did not desire to abide by the mortgage deed.

5 The learned Counsel for the respondent submits that on the date of filing of the suit by defendant (original plaintiff), the value of the said suit land admeasuring about 35 Gunthas as in 1982 was Rs. 75,000/-. The intention of the parties is clear. In fact, at the time of filing of the suit it was the specific contention of the original plaintiff that he had offered an amount of Rs. 3,000/- as contemplated in the mortgage deed. However, the appellant had refused to accept the same and therefore, he was constrained to file the suit for redemption of mortgage deed. The plaintiff has also shown his willingness to pay the amount at the threshold itself.

6 In view of this, the appeal being devoid of merits stands dismissed.

[SMT. SADHANA S. JADHAV, J.]