

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

**SECOND APPEAL NO.417 OF 2015
WITH
CIVIL APPLICATION NO.932 OF 2015**

Shri Hanumant V. Sawant ... Appellant
Vs
Sou. Seetabai K. Sawant ... Respondent
...
Mr. Sushil A. Inamdar I/by Mr. Sonwalkar for the Appellant.

CORAM : SANDEEP K. SHINDE J.
DATE : 16 JANUARY, 2019

P.C. :

Heard the learned counsel for the Appellant.

2 *Perused the judgments passed by the Courts below as well as notes of evidence. The sole defendant has preferred this Second Appeal, against whom the decree of possession was drawn by the trial Court and confirmed by the Appellate Court in Regular Civil Appeal No.89 of 2012. It is against the judgment of the appellate Court, this Appeal is preferred.*

3 *Regular Civil Suit No.208 of 2008 was filed by the Plaintiff (Respondent herein) for possession on title. The suit property is house which was sold by the Defendant to the Plaintiff vide registered sale deed dated 4th January, 2008. The suit was resisted by the Defendant on the ground that it was not outright sale but mortgage in terms of Section 58(c) of the Transfer of Property Act, 1882. The suit was also resisted on the ground that his signatures were obtained by misrepresentation and impression was held out that it was document of mortgage. The Defendant, however, did not examine any witness in support of his contention. The trial Court, therefore, decreed the suit.*

4 *I have gone through the evidence of Plaintiff. She produced and proved registered sale deed at Exhibit 14. In the cross-examination, P.W.1 was not even suggested that the registered sale deed (Exhibit 14) was executed on misrepresentation. Though it is contended that the sale deed was obtained by misrepresentation within the meaning of Section 18 of the Indian Contract Act, 1872, neither the particulars of the misrepresentation were pleaded in the Written Statement nor evidence*

was led. That even otherwise, the Defendant could not have led the evidence and contradict terms of the sale deed by setting up defence that the parties had agreed to execute the deed of mortgage by conditional sale which is excluded under Section 92 of the Indian Evidence Act, 1872.

5 *Considering the facts of the case, in my view, appeal does not give rise to substantial question of law. Appeal is accordingly dismissed and the Civil Application is disposed of.*

(SANDEEP K. SHINDE, J.)