IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.89 OF 2018
WITH
CIVIL APPLICATION NO.199 OF 2018

Dipali Dilip Kulkarni
Legal Heir
Daughter of Malti V. Mungale … Appellant/Plaintiff
Vs
Dilip Malhar Kulkarni & Ors. ... Respondents/Defendants
…
Mr. Sandip S. Dhuri for the Appellant.
Mr. S.M.Kamble for the Respondent Nos.4A and 4B.
Mr. S.C.Mangale for Respondent No.2.

CORAM : SANDEEP K. SHINDE J.
DATE : 22 MARCH, 2019

P.C. :

Heard learned counsel for the parties and I will refer the parties as Plaintiff and Defendants.

2 Appellant before this Court is daughter of Malati Vasantrao Mungale who had borrowed Rs.3 Lakhs from Bhudargad Urban Co-operative Credit Society in the year 1995 and executed a continuing guarantee in favour of the said Society by mortgaging the land Gat No.581 and Gat No.84 ('Property' for short). This

guarantee was executed by Mr. Dilip Kulkarni her son-in-law, as her Power of Attorney Holder. Since borrower Malti committed default, proceedings under Section 101 of the Maharashtra Co-operative Societies Act were initiated and certificate of recovery was issued pursuant thereto. Mortgaged property was auctioned by public auction on 26th October, 2005 by following due procedure contemplated under the MCS Rules. Respondent no.4 herein is auction purchaser in whose favour sale deed was executed on 16th May, 2006. Admittedly, neither recovery proceedings nor the auction proceedings were challenged by the borrower Smt. Malati

3 That nearly after, a year and ten months from the date of execution of the sale deed in favour of the respondent no.4, borrower had filed the suit and sought a decree that the auction conducted by the Credit Society on 26th October, 2005 was illegal and not binding on her, in-as-much as under the said auction property which was not mortgaged has been auctioned and sold to the respondent no.4.

4 Pending suit, Malti died and her daughter is her legal representative. Son-in-law of the plaintiff has been impleaded as defendant no.1. It is the plaintiff's case that she had never authorised her son-in-law to mortgage the suit property to the said co-operative credit society. It is her case that mortgage deed has been executed without her authority and thus it is not binding on her. It is her case that even assuming the continuing guarantee was executed by her son-in-law as her attorney, however, she had never mortgaged entire Gat No.581 but only half of Gat No.581 (8 ana share); but misinterpreting recitals of the mortgage deed (continuing guarantee) bank auctioned entire Gat No.581.

5 The learned Trial Judge decreed the suit. However, the said decree was reversed in the Regular Civil Appeal No.311 of 2012, having found it was collusive suit. The learned Appellate Court dismissed the suit by the judgment and order dated 23rd February, 2017. It is against the decree of the Appellate Court, legal representative of the plaintiff has preferred this appeal.

6 Learned counsel for the appellant, would submit that appellate Court has misconstrued and misinterpreted the mortgage deed, which in clear terms shows that only half share in Gat No.581 was mortgaged to the credit society and not the entire Gat No.581.

7 I have gone through the evidence as well as the mortgage deed executed by son-in-law of the borrower. It shows that two properties were mortgaged, i.e., Gat No.581 and Gat No.84. It further shows that half of the share in the Gat No.84 was mortgaged and not half share in Gat No.581. Thus, the finding of fact recorded by the Appellate Court is consistent with the evidence on record. Besides, it cannot be overlooked that the plaintiff neither challenged proceedings under Section 101 of the Maharashtra Co-operative Societies Act nor auction proceedings. It is only after a year and 10 months from the execution of the sale deed executed in favour of the respondent no.4, she had filed the suit alleging her son-in-law was not authorised to mortgage the property.

8 If, at all it was the plaintiff's case that she had not mortgaged entire Gat No.581 but part of it and had not authorised

son-in-law as her attorney, she ought to have contested recovery proceedings initiated by the credit society. However, she chose to remain silent and even did not challenge the public notice issued by the Society before conducting public auction.

9 All these facts clearly indicate that the proceedings adopted in the subject suit was after thought and in collusion with her son-in-law, who was defendant no.1.

10 Thus, findings recorded by the appellate Court being findings of fact, appeal does not give rise to substantial question of law. Appeal is, therefore, dismissed with no order as to costs.

(SANDEEP K. SHINDE, J.)