

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 362 OF 2018

Baban Bhimaji Naiknaware
(deceased through his legal heirs)
1A. Kachar Baban Naiknaware and ors. Appellants
Vs.
Prakash Rakhmaji Ghogare
(deceased through his legal heirs)
1A. Chhaya Prakash Ghogare and ors. .. Respondents

Mr.S.V.Sadavarte, for the Appellants.

CORAM : M.S.KARNIK, J.

DATE : 21st JUNE, 2019

P.C. :

- . Heard learned Counsel for the appellants.
2. The appellants are the original plaintiffs. The plaintiff was in need of money. He therefore approached Rakhamaji Ghogare. The plaintiff was ready to mortgage the suit property to Rakhamaji, but Rakhamaji had insisted for execution of sale deed as collateral security of loan, as a result, a deed of sale was executed by the plaintiff in favour of Rakhamaji

on 04/06/1984. Rakhamaji paid Rs. 7,000/- to plaintiffs as loan. At the same time, deceased Rakhamaji had executed an agreement of reconveyance and thereby agreed to reconvey suit property after 5 years on condition that the plaintiff shall pay Rs.7,000/- to Rakhamaji within 5 years. After 5 years, the plaintiff approached Rakhamaji and asked him to accept Rs.7,000/- and to reconvey the suit property. It is the case of the plaintiff that Rakhamaji had accepted Rs.7,000/- , but failed to reconvey the property as agreed. Both the Courts below have concurrently found that the plaintiff failed to prove that he had paid Rs.7,000/- to the respondents.

3. I have gone through the findings of the Courts below. I find that the First Appellate Court has in detail appreciated the evidence on record while arriving at the finding that plaintiff failed to prove that he repaid Rs. 7,000/- to Rakhamaji. It is material to note that the plaintiff himself did not step into the witness box. He examined his daughter-in-law and father of daughter-in-law. Nothing has been produced

on record to show that the said amount of Rs.7,000/- was paid to Rakhamaji. P.W.1 and P.W.2 have stated that the amount was paid in the month of March 1989. The First Appellate Court on going through the testimony of P.W.2- Ankush Rokade observed that in the cross examination Ankush Rokde stated that he has insisted the plaintiff to obtain receipt of payment of money from deceased Rakhamaji. Despite this, though it is the case of the plaintiff that the amount of Rs. 7,000/- is paid to the Rakhamaji, no receipt was obtained from Rakhamaji. It is further pertinent to mention that in the notice at Exhibit No. 115 issued by plaintiff to respondent No.1 – Prakash Rakhmaji Ghogare asking him to reconvey the suit property, there is no mention about the plaintiffs having paid an amount of Rs. 7,000/- to the deceased Rakhamaji.

4. In these circumstances and for the reasons mentioned in the order impugned, if the Courts below have come to the conclusion that the plaintiffs stand that amount of Rs.7,000/- was accepted by the Rakhamaji is not found proved,

I see no error in the concurrent findings of fact recorded by the Courts below. The Court had arrived at findings of fact based on the materials on record. The present appeal does not involve any substantial question of law. The Second Appeal is dismissed.

(M.S.KARNIK, J.)