

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

**SECOND APPEAL NO.752 OF 2019
WITH
CIVIL APPLICATION NO.1548 OF 2019
ALONG WITH
SECOND APPEAL NO.754 OF 2019
WITH
CIVIL APPLICATION NO.1554 OF 2019**

Ramchandra Dyanu Bhopale ... Appellant

Versus

Anandibai Dyanu Bhopale

since deceased

through legal heirs

1A. Sou Radhabai Khanderao Ingavle

And Others ... Respondents

.....

Mr. S.G. Deshmukh i/b Mr. Sanjay A. Ghaisas for the
Appellant/applicant.

Mr. Abhijit Adagule for Respondent Nos.1(a) to 1(f) and 2.

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CORAM : S.C. GUPTE, J.

DATE : 25 NOVEMBER 2019

P. C. :

. These two second appeals challenge two concurrent judgements and decrees passed by the courts below, decreeing the Plaintiffs' suit. The Respondents are original plaintiffs, whilst the Appellant is original defendant No.1.

2 It was the case of the plaintiffs before the trial court that the

property was in the name of plaintiff no.1; that the sale deed executed by plaintiff No.1 in favour of defendant No.1 was fraudulent and was executed under a misrepresentation; and that no consideration really passed as between defendant no.1 and plaintiff no.1. It was also submitted that though the property was purchased in the name of plaintiff no.1, the consideration was really paid by plaintiff No.2. This latter aspect of the case was not accepted by either of the courts below. Both courts, however, came to a concurrent finding of fact that the sale deed executed by plaintiff no.1 in favour of defendant no.1 was void for want of consideration.

3 Plaintiff no.1 was the mother of both plaintiff no.2 and defendant Nos.1 to 3. The suit property consisted of a plot of 66 x 33 feet area of Gat No.58. This property was purchased by a sale deed by plaintiff no.1 from one Dadu Ramchandra Dabade and others. A house was thereafter constructed in the property. It was the case of plaintiff no.2 that consideration for both purchase of the suit property and construction of the house thereon came from his earnings. It was submitted that defendant no.1 (brother of plaintiff no.2 and other defendants) made a misrepresentation to his mother, plaintiff no.1, that there was some dispute on account of partition and an affidavit was required to be executed by her. It was submitted that taking disadvantage of her illiteracy, defendant no.1 got the sale deed executed by plaintiff no.1. It was submitted that the sale deed was bogus and without consideration. Defendant no.1 resisted the plaintiffs' claim by filing a written statement. He denied all adverse

allegations against him. It was his case that the property was originally purchased by plaintiff no.1 from her own earnings; she was the exclusive owner and in possession of the suit property having every right to dispose of the same; plaintiff no.1 accepted from time to time an amount of Rs.1,00,000/- from him and in consideration of this amount, executed a registered sale deed in respect of the suit property in his favour. The sale deed was of 13 April 2007. It was the case of defendant no.1 that on the basis of this sale deed, he had become an absolute owner of the suit property and neither plaintiff no.2 nor defendant no.2 had any right to the suit property. The suit was only contested by defendant no.1. The parties went to trial on the issues framed by the trial court, invoking both the invalidity of the sale deed executed by plaintiff no.1 in favour of defendant no.1 and the purported real ownership of plaintiff No.2 in respect of the suit property. The trial court held against the plaintiffs on their case of real ownership of plaintiff no.2 as against the apparent ownership of plaintiff no.1. It, however, held that there was no proof concerning payment of any consideration by defendant no.1 to plaintiff no.1; defendant no.1, who had stepped into the witness box, was unable to explain how he had paid the stated consideration of Rs.1,00,000/- to defendant no.1; there was no receipt to support the payments purported to have been made from time to time; there was no note kept by defendant no.1 of any such payment. The court observed that there was nothing on record even to show that defendant no.1 had Rs.1,00,000/- as of the date of the sale deed or any time prior thereto. Though some money order receipts were

alleged by defendant no.1, the court observed that they were not supported by any acknowledgment. Besides, these money orders were of the year 2008-09, whereas it was not the case of defendant no.1 that he had paid any consideration for the sale deed of April 2007 by these money orders which were later in point of time. The court was of the view that they were, thus, not relevant from the point of view of the case in hand. The court also noticed that the sale deed had recited that plaintiff no.1 took the consideration of Rs.1,00,000/- from defendant no.1 at Vadgaon; the deed did not say that this consideration was paid from time to time or amounted to an aggregate sum of Rs.1,00,000/-. The sale deed recited that the suit property was an open land, whereas it had a family house constructed on it. For all these reasons, the trial court held that the plaintiffs had proved that the sale deed was null and void, and without any consideration, and answered issue no.2 framed in this behalf in the affirmative.

4 When the matter carried by defendant no.1 before the District Court in appeal, the appeal court reiterated these findings. The court observed that evidence of defendant no.1 that he had paid Rs.1,00,000/- and thereafter got the suit sale deed executed was not trustworthy or believable. The court was of the view that in the peculiar facts of the case, it was obligatory for defendant no.1 to prove that that he had really paid the consideration amount of Rs.1,000,000 to plaintiff no.1. The court also observed that apart from his own self serving statement, there was nothing on record to

show that he had actually paid the consideration of Rs.1,00,000/- to plaintiff no.1. The court observed that his evidence in support of any such payment was vague. The court observed that in his examination-in-chief, defendant no.1 had deposed that from time to time, plaintiff no.1 collected an amount of Rs.1,00,000/- from defendant no.1. There were no particulars of any such payment. Apart from this, the court also observed that the evidence on record clearly established that the suit property had a house on it, admesuring 49 x 28 feet; there was electricity connection to this property; and defendant no.2 was running a powerloom in this property. The court observed that in this set of facts and circumstances, the description of the suit property as an open land, without any mention of the house constructed in it, raised a suspicion. The court also considered the other evidence led by the parties. Defendant No.1 had examined one more witness (D.W.2), who claimed to be present at the time of execution of the sale deed and who claimed to have put his signature on the sale deed as an attesting witness. The court discarded his evidence. In particular, the court noted that in his cross examination, D.W. 2 had categorically admitted that there was no signature of D.W.2 on the sale deed. On the other hand, the plaintiffs had examined an Assistant Tax Inspector as P.W.2. From his evidence, it was established that defendant no.1 had got his name recorded in the assessment register on the basis of the sale deed. The court observed that entries in the record of rights were merely for fiscal purposes to collect revenue; they had only presumptive value; and that a mere entry in favour of Defendant No.1

in the revenue record was not sufficient to establish his ownership of the suit property. The court also considered the testimony of P.W.3, who was Deputy Executive Engineer of Electricity Division. His evidence showed that electricity connection was given in the suit property in the name of defendant no.2 originally and it was disconnected since September 2009. The evidence showed that the electricity connection was given to run a powerloom in the suit property. From this evidence, the court observed that the suit property had a powerloom unit, having a constructed area of 49 x 28 feet. The court contrasted this evidence with the description of the suit property in the sale deed as an open plot of land and without any mention of a construction on it. Having regard to all these circumstances, the appeal court did not find fault with the conclusion of the trial court that the sale deed executed by plaintiff no.1 in favour of defendant no.1 was void for want of consideration.

5 Whether the sale deed is supported by a consideration is a pure question of fact. The courts below have taken into account the evidence led by the parties. They have not disregarded any important or a vital piece of evidence, or indeed taken into account any irrelevant or non-germane circumstance or material. The conclusion of the courts below is clearly supported by evidence and cannot be said to be a conclusion without any evidence. The conclusion is clearly a possible conclusion and does not exhibit any perversity or unreasonableness.

6 Learned Counsel for the Appellant submits that the main contention of the plaintiffs in their suit was of real ownership of the suit property of plaintiff no.2 as against the apparent ownership of plaintiff no.1. The plaintiffs had also alternately pleaded that the sale of the suit property purportedly effected by plaintiff no.1 in favour of defendant no.1 was void for want of consideration. The parties had led evidence on this issue and were fully heard and after a proper analysis of the evidence, as noted above, the issue was held in favour of the plaintiffs and against defendant no.1 and as we have noted above, there is no perversity in the conclusion of the courts below on the issue.

7 Accordingly, there is no merit in the second appeals. The second Appeals are dismissed.

8 In view of the disposal of the appeals, the respective civil applications taken out therein do not survive and are also disposed of.

Rajesh V.
Chittewan

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(S.C. GUPTE, J.)