

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

SECOND APPEAL NO.89 OF 2018

(Rameshwar Vitthalrao Kunbithop ..vs.. Digambar Sadhuji Kale)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri T.G. Bansod, Counsel for the appellant.

CORAM : ROHIT B. DEO, J.

DATED : 25-03-2019

The plaintiff executed sale-deed dated 13-4-2005 in favour of defendant-Digambar Kale qua the suit property which is agricultural field admeasuring 3.20 Acres for consideration of Rs.90,000/-.

2. The plaintiff instituted Regular Civil Suit 6/2009 seeking a declaration that the sale-deed was a nominal document and that loan advanced by the defendant was intended to be secured. The plaintiff contended that he repaid the loan in entirety on 15-3-2008 and yet the defendant did not execute the deed of re-conveyance. The suit is dismissed by the trial Court by judgment and decree dated 05-4-2013. The appellate Court has confirmed the judgment and decree of the trial Court by dismissing Regular Civil Appeal 134/2014 by judgment dated 03-11-2017. Undeterred, the plaintiff is in appeal under Section 100 of the Code of Civil procedure.

3. Having heard Shri T.G. Bansod, learned Counsel

for the appellant, this Court finds that there is no question of law involved much less substantial question of law.

4. The Courts below have recorded concurrently that the plaintiff failed to prove the theory of loan transaction. The dates on which the loan was advanced and the repayments allegedly made are not proved, is a finding of fact recorded on the basis of evidence on record. Shri T.G. Bansod, learned Counsel would heavily rely on the evidence of one of the attesting witnesses who is examined as P.W.2 to contend that the evidence of the said witness is wrongly shut out from consideration. The submission is noted only for rejection. Both the Courts below noted that the said witness was indebted to the plaintiff. The close relationship of the said witness with the plaintiff is brought on record. The statement on oath made by the said witness is that the loan was advanced one year prior to the execution of the sale-deed which does not appear to be the case of the plaintiff himself. The other attesting witness who is examined on behalf of the defendant D.W.2 has supported the defendant and has deposed on oath that the sale-deed was a genuine transaction. The Courts below have, on holistic appreciation of the evidence on record, disbelieved the evidence of P.W.2 and rightly so.

5. Both the Courts below having recorded

concurrent findings on the basis of the evidence on record, it would not be permissible for this Court in second appeal to disturb the said findings by re-appreciating the evidence.

6. The appeal is without substance, and is dismissed with no order as to costs.

JUDGE

adgokar