

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

**SECOND APPEAL NO. 59 OF 2020  
WITH  
CIVIL APPLICATION NO. 43 OF 2020  
IN  
SECOND APPEAL NO.59 OF 2020**

Kaluram Haribhau Waghmare .. Appellant

v/s.

Rakhmaji Chintaman Waghmare and Ors. .. Respondents

Mr. Rahul Deodhar a/w. S.M.Kamble for Appellant.

**CORAM : AMIT B. BORKAR, J.**

**DATED : 17<sup>th</sup> JANUARY, 2020**

**P. C.**

. The appellant who is original plaintiff has filed present Second Appeal challenging Judgment and decree passed by the Adhoc District Judge-1, Pune in Civil Application No. 160 of 2012 thereby confirming Judgment and decree passed by Joint Civil Judge, Pune thereby dismissed the suit of the plaintiff seeking cancellation of sale deed dated 07/12/2000 and relief of perpetual injunction.

2. The appellant who is original plaintiff had filed suit for cancellation of sale deed dated 07/12/2000 and relief of perpetual injunction. It was the case of the plaintiff that the sale deed executed on 07/12/2000 got executed by affixing false and forged thumb impression of deceased Kisan and, therefore, the said sale deed is void. It was also the case of the plaintiff that there was facility of taking photographs of seller and purchaser in the year 2000 in the Sub Registrar office. However, the said facility was not used and, therefore, doubt is created.

3. The respondents contested the case of the plaintiff by filing written statement and denied contentions of the plaintiff. It was stated in the written statement that the property was self acquired property of Late Kisan and, therefore, nobody else had any right over the suit property. It was also stated that the execution of the sale deed was valid and proper.

4. The Learned Trial Court after taking into consideration pleadings of the parties, framed 13 issues and answered them against

the plaintiff. The Learned Trial Court considered plea of the plaintiff as regards the execution of sale deed by practicing fraud and has recorded finding of fact that the plaintiff has failed to prove execution of sale deed by practicing fraud on the vendor. The Learned Trial Court also recorded a finding that there is no evidence produced by the plaintiff in the form of examination of finger print Bureau to prove the fact that the thumb impression was of a dead person is that of the vendor. The Learned Trial Court, therefore, dismissed the suit. The appellant herein challenged the said decree by way of Civil Appeal No. 160 of 2012. The Learned Appellate Court after considering the material on record, recorded a finding of a fact that the plaintiff has failed to prove his case that the sale deed does not bear thumb impression of deceased Kisan. The Learned Appellate Court also recorded the finding of the fact that there is no trustworthy evidence about the forged thumb impression as contended by the plaintiff.

5. The learned advocate appearing for the appellant submitted that the presumption of the registered document has been discharged by the plaintiff by producing voluminous evidence on record which

has been ignored by both the Courts below. While executing the sale deed there are no photographs as required by law which has resulted into material regularity and, therefore, the sale deed is void.

6. I have carefully gone through Judgments of both the Courts below. It appears that the Learned Trial Court in para-19 has considered the case of the plaintiff about the forged thumb impression and has recorded a finding of fact that there is no material produced by the plaintiff to discharge the burden cast on the plaintiff. The learned advocate for the appellant fairly conceded before this Court that there is no material evidence to substantiate case of fraud pleaded by the plaintiff. The learned lower Appellate Court also has considered material on record and has recorded finding of fact that the plaintiff has failed to prove his case that sale deed is obtained by playing fraud on the vendor.

7. I do not find any substantial question of law involved in the present Second Appeal. There is concurrent finding of fact recorded by both the Courts below, therefore, no interference under Section 100 of Code of Civil Procedure Code is called for.

8. The Second Appeal is dismissed. No order as to costs.
9. In view of dismissal of the Second Appeal, the Civil Application No. 43 of 2020 does not survive and the same is also dismissed.

**(AMIT B. BORKAR, J.)**