

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

SECOND APPEAL NO. 27 OF 2020

(Bhaskar Domaji Katarkar Vrs. Dhondabaji Marotrao Bhagat and another)

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

Court's or Judge's orders.

Shri R.M.Ahirrao, counsel for the appellant
Shri S.K.Bhoyar, counsel for the respondent no.1.

CORAM : ANIL S KILOR, J.
DATE : 04th MARCH, 2020.

The present appeal is directed against the judgment and decree dated 13th October, 2015 passed by the learned Ad-hoc District Judge-I, Wardha in Regular Civil Appeal No. 144 of 2011 arising out of the judgment and decree dated 7th February, 2011 passed by the learned 2nd Joint Civil Judge, Junior Division, Hinganghat in Regular Civil Suit No. 80 of 2007, partly decreeing the suit for possession and permanent injunction and mesne profit

2. Heard Shri R.M.Ahirrao, learned counsel for the appellant and Shri S.K.Bhoyar, learned

counsel for the respondent no.1.

3. Shri Ahirrao, learned counsel for the appellant submits that suit property i.e field survey no. 239/5, Mouza No.144 situated at Yerla village is owned by the appellant and in money lending transaction between the appellant and one Shri Ramdas Makde, the appellant had executed a nominal sale-deed in favour of Ramdas Makde vide Exh.31 dated 30th April, 1998. Subsequently, without giving any knowledge to the appellant, Ramdas Makde sold out to the plaintiff Dhondbaji Marotrao Bhagat as per sale-deed vide Exh.30 on 26th April, 2007.

4. He points out that appellant-defendant has successfully pointed out before the trial Court as well as Appellate Court that because it was a nominal sale-deed executed in a money lending transaction, since 1998 at no point of time the possession was handed over to either Ramdas Makde or Plaintiff-

Dhondbaji Bhagat.

5. He submits that said fact of having possession of the defendant is sufficient to hold that money lending transaction was nominal. However, though both the Courts below have concurrently held that plaintiff is in possession of the suit property, the decree of possession was granted against him and thereby both the Courts below have committed error.

6. Learned counsel for the appellant further submits that earlier the suit was for perpetual injunction and subsequently after filing the written statement when it was pointed out by the defendant that he is in possession of the suit property, the suit was amended and the prayer for possession was added to the suit.

6. According to him, the said fact is also supports the case of the defendant and therefore he prays for quashing and setting aside both the

judgments and decree passed by the Courts below.

7. He lastly argues that though it is the case of the plaintiff Dhondabaji that he purchased the suit land vide Exh.30 from Ramdas Makde, however, Ramdas Makde was not made party to the suit.

8. Per contra, Shri Bhoyar learned counsel for the respondent no.1 submits that both the Courts below have rightly considered the evidence and after analysing the evidence on record, the courts have come to the conclusion that appellant has failed to prove that it is money lending transaction.

9. He further submits that both the Courts have rightly observed that appellant has not challenged any of the sale-deeds Exh.30 or Exh.31 and sought cancellation of the said sale-deeds by filing independent and separate proceeding as available under the law.

10. He submits that about the title of the plaintiff, both the Courts have given concurrent findings and since lower appellate Court is the last court of findings of fact and this Court in Second Appeal cannot interfere or reverse such findings of fact or re-appreciate the evidence and reach to some different conclusion unless the findings are perverse and not based on any evidence, this Court may not entertain the challenge made to the impugned judgment and decree.

11. To consider the rival contentions of both the parties, I have gone through the judgments and decree of both the Courts below.

12. There is no dispute that defendant has come up with the case that the sale-deed Exh.31 executed in favour of Ramdas Makde was a nominal sale-deed and it was executed in money lending transaction. However, the defendant has not filed any suit for cancellation of the said sale-deed. It is

also an admitted fact that defendant has also not filed any proceeding for cancellation of sale-deed Exh.30 dated 26th April, 2007 executed by Ramdas in favour of plaintiff Dhondbaji Marotrao Bhagat.

13. In absence of any challenge to said sale-deeds Exh.30 and Exh.31, the Court has rightly observed that since both the documents are registered documents and there are some other documents namely earnest deed Exh.40 and other documents which corroborate the story of the plaintiff that the sale transaction was not money lending transaction.

14. Both the Courts below have further observed that though it is the case of the defendant that in a money lending transaction sale-deed Exh.31 was executed in favour of Ramdas Makde, the defendant has not brought on record any evidence to show that it was a money lending transaction and in absence of any such evidence available on record

relating to money lending transaction both the Courts below have rightly rejected the case of the defendant.

15. It is not the case of the appellant that any findings given by both the Courts below are without evidence and same are perverse.

16. In view of only fact that the defendant was never parted with the possession, it is difficult to hold that the sale-deed Exh.31 was nominal sale-deed and it was out of money lending transaction, more particularly in absence of any evidence available on record in respect of money lending transaction.

17. In the circumstances, I do not find any substantial questions of law involved in the present appeal.

18. Accordingly, the appeal is dismissed. No order as to costs.

JUDGE