IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 921 OF 2018

Subhadrabai Himmatrao Thakur
Age : 59 years, Occu : Household,
R/o Mohadikar Plot, Kalyan Bhavan,
Zami Chauk Road, Amalner,
Tq. Amalner, Dist. Jalgaon .. Appellants
(Orig. Defendant)

Versus

1] Jaydeep Vinayak Sali,
Age : 48 years, Occu : Service,
R/o Sudaiv, 173/2013, Patil Colony,
Amalner, Dist. Jalgaon

2] Pradip Vinayakrao Sali,
Age : 50 years, Occu : Service,
R/o Bhaktipushpa, MIG III,
33, HUDCO, Manmad, Dist. Nasik

3] Vinayakrao Shankarrao Sali,
Age : 50 years, Occu : Pensioner,
R/o Sudaiv, 173/2003, Patil Colony,
Amalner, Dist. Jalgaon

4] Rohini Dilip Sali,
Age : 44 years, Occu : Household,

5] Ku. Suyog Dilip Sali (minor)
Represented by mother guardian
Rohini Dilip Sali

6] Ku. Shubhada Dilip Sali,
Age : 23 years, Occu : Education,

Nos. 4 to 6 R/o Vaibhav-Laxmi Apartment,
Govind Nagar, First Chauk, Mumbai Naka,
Nasik, Tq. & Dist. Nasik .. Respondents

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Mr. M.L. Dharashive, Advocate for the appellant
Mr. B.N. Magar, Advocate and Mr. S.S. Puri, Advocate for respondent no. 3 - caveator

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CORAM : ANIL S. KILOR, J.
DATE : 24-03-2021

ORDER :

1. The original defendant by way of present Appeal is challenging the Judgment and Decree passed by the District Judge-1 in Civil Appeal no. 52 of 2005, upholding the Judgment and Decree dated 16-9-2015 passed in RCS/23/2009, decreeing the suit for redemption of mortgage and for possession of the mortgaged property.

2. I have heard learned counsel for the appellant.

3. Brief facts of the present case are as follows. [Parties are referred as per their status in suit].

. It is the case of the plaintiff that the plaintiff was in need of money and the defendant paid ₹ 25000/- against which a document - "हमीपत्र" was executed and thereby possession was handed over to the defendant on condition that on repayment of amount of ₹ 25000/-, the defendant will hand over the possession of the suit property which is a constructed house bearing CTS No. 3456/2, Kalyan Bhavan, Mohadikar Plots, admeasuring 30 feet each East-West and 13 feet each North-South. According to the plaintiff, the said document is a mortgage deed executed on 09-01-1998. It is the further case of the plaintiff that after making payment of ₹ 25000/-. the possession was demanded by the plaintiff, however, on one or the other pretext the defendant avoided to handover the possession to the plaintiff which caused the plaintiff to file suit for redemption of mortgage and for possession. The learned trial Court decreed the suit in favour of the plaintiff and directed the defendant to handover the possession of the mortgaged property within one month on deposit of ₹ 25000/- by the plaintiff in the Court vide Judgment and Decree passed in RCS/23/2009.

4. Feeling aggrieved by the said Judgment and Decree, the defendant preferred an Appeal viz. Civil Appeal no. 52/2015 which came to be dismissed by the impugned Judgment and Decree dated 31-10-2017 passed by the District Judge-1 Amalner.

5. Learned counsel for the appellant submits that the document "हमीपत्र" - exhibit 53 is wrongly considered by both the Courts below as a mortgage deed whereas there is no word "mortgage" used in the said document and, therefore, considering the said "हमीपत्र" as mortgage deed, is erroneous.

6. He further submits that if the document - exhibit 53 is a mortgage deed in that case, the same cannot be read in evidence as the said document is not a registered mortgage deed which is required to be registered one under the provisions of the Registration Act, 1908.

7. To consider the contentions raised by learned counsel for the appellant, I have gone through the record and proceedings and also the judgments of both the Courts below.

8. The appellant is not disputing execution of the document - exhibit 53 and the contents of the same. It is true that the title of the document - exhibit-53 is "हमीपत्र" (Undertaking), however, after going through the contents and after reading it minutely, the intention of the parties can be gathered from the same and it is clear that the intention of the parties to was execute a mortgage deed in respect of the suit property.

9. It is settled law that to know the intention of the parties to any document, the contents of the document should be taken into consideration and not the title of the document. Thus, both the Courts below after considering the contents of the document and also after considering the intention of both the parties to execute the said document, has arrived at a definite conclusion that the said document is a mortgage deed. As I observed that after considering the contents of the document, I am also of the same view that the said document is a mortgage deed and in that view of the matter, I do not find any perversity or illegality in the findings recorded by both the code below that exhibit - 53 is a mortgage deed.

10. As regards the second contention of the learned counsel for the appellant that if this document is considered to be a mortgage deed, in that event, it is mandatory to have the said document registered one under the provisions of the Registration Act, 1908. There is no dispute about the said

legal position of law, however, it is a settled law that even if the said document is not a registered one, it can be used for collateral purposes and in the present matter, both the Courts below have considered the said document for the collateral purposes to arrive at a particular conclusion and to decide the controversy between the parties.

11. Thus, I do not find any merit in the present appeal and, therefore, in absence of any substantial question of law involved in the present appeal, the Appeal is dismissed. No order as to costs.

12. In view of dismissal of Second Appeal, civil application no. 14435 of 2018 stands disposed of.

[ ANIL S. KILOR ]
JUDGE

arp/