

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.326 OF 2021

SUSHILABAI VISHWANATHRAO CHALWA
VERSUS
TULSHIRAM DAULATRAO SHINDE (KARBHAI) AND OTHERS

...
Mr. V. V. Bhavthankar, Advocate for the appellant.
Mr. G. D. Kale, Advocate for respondent No.3.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02.09.2021

ORDER :-

. Present appeal has been filed by original plaintiff. She had filed Regular Civil Suit No.210 of 2012 (Old No.201 of 2010) before learned Joint Civil Judge Senior Division, Udgir, District Latur for rescission of contract, setting aside sale-deed and declaration. The said suit came to be decreed on 27.09.2016. Present respondent No. 3/ original defendant No.3 had challenged the said judgment and decree before learned District Court, Udgir, District Latur by filing Regular Civil Appeal No.72 of 2016. The said appeal was heard and dismissed by learned District Judge-2, Udgir on 10.12.2019. Hence, this second appeal.

2. Heard learned Advocate Mr. V. V. Bhavthankar for the appellant and learned Advocate Mr. G. D. Kale for respondent No.3.

3. It has been vehemently submitted on behalf of appellant that the first appellate Court has not appreciated the evidence and law points properly. It was not properly considered that though the plaintiff had executed sale-deed dated 16.07.1987 in favour of defendant No.1 to 3 and thereby sold the suit land to them; yet, by a separate agreement executed by defendant No.3 on the same day, they had agreed that the land would be used for running a school, name of the husband of the plaintiff would be given to the school, co-opt son of the plaintiff as member of the institution and give permanent employment to one of the family member of the plaintiff. Defendant No. 1 to 3 have failed to obey the terms of said agreement. Therefore, the sale-deed is liable to be set-aside by rescission of contract. The said sale-deed is not binding on the plaintiff. The plaintiff had led oral as well as documentary evidence. Defendants have not disputed the execution of such documents. They have failed to prove that they have complied with the terms of the agreement. The learned Trial Judge had considered the facts and evidence properly. The learned Appellate Court ought not to have interfered with the decree passed by the learned Trial Judge. The appeal ought to have been dismissed. Substantial questions of law are arising in this case, as the findings arrived at by the Courts below is perverse to the evidence adduced.

4. Per contra, the learned Advocate appearing for respondents supported the reasons given by the learned First Appellate Court and submitted that on the facts of the case and assessment of evidence adduced, the appeal has been allowed and decree of the Trial Court has been rightly set aside. No substantial question of law is arising in this case.

5. At the outset, it is to be noted that the defendants have not denied the execution of two documents on the same day. The first document was the sale-deed Exhibit-34. By this document, the plaintiff had sold her land to the Institution Maratha Shikshan Prasarak Mandal, Udgir. It appears that now the plaintiff is contending that the said document Exhibit-34 was, in fact, a gift-deed, as there was no intention to execute sale-deed. Thereafter, on the same day, another document was executed by defendant No.3 in favour of the plaintiff. That document is at Exhibit-39. Now, the plaintiff contends on the basis of Exhibit-39 that in fact the parties intended to execute gift-deed and not sale-deed. Plaintiff is not allowed to take such stand. She is not saying that while executing Exhibit-34, there was any kind of misrepresentation, coercion or fraud. When the said document of Exhibit-34 was executed willingly and with full knowledge, then contrary stand is not allowed. Such act would be barred by estoppel. In view of sale, executed under Section 54 of

Transfer of Property Act, plaintiff transferred all the rights of ownership in favour of defendant - Trust. There cannot be reservations or conditions to such transfer of ownership. In other words, law does not contemplate transfer of ownership with conditions as enumerated in Exhibit-39. At the most, said separate agreement may be considered or could have been entered into, which would be independent in itself.

6. Another fact is that neither in said Exhibit-39, nor in the pleadings and proof, the plaintiff say that there was stipulation that was agreed, that in case of non-observance of conditions or terms enumerated in Exhibit-39, the sale-deed would stand cancelled or plaintiff would get right to get that transaction cancelled. If no such specific term was agreed between the parties, it will not give right to the plaintiff to file suit for cancellation of Exhibit-34.

7. Now, alternatively, if we can consider the prayer of the plaintiff, then we must also see whether plaintiff has led evidence to prove that contention. It has come in evidence of the plaintiff that the husband of the plaintiff has been taken on the body of the management of the Trust. Plaintiff's daughter-in-law has been given employment in the school run by the Trust. The land so sold is used for running the school, for which it was taken. Thus, it can be seen that almost all the terms agreed in

Exhibit-39 have been fulfilled. Plaintiff cannot ask more. She has not filed suit for specific performance of agreement Exhibit-39.

8. Plaintiff has failed to prove that the transaction was gift and not of sale. The learned First Appellate Court has correctly assessed the evidence adduced by the plaintiff and has also considered law points raised. The judgment and decree passed by the learned Trial Judge was perverse and contrary to the evidence adduced. The interference was properly made by the learned First Appellate Court. Hence, no substantial question of law, as contemplated under Section 100 of Code of Civil Procedure is arising in this case, requiring admission of the second appeal. Therefore, the appeal stands dismissed at the threshold.

[SMT. VIBHA KANKANWADI, J.]

scm