

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 SECOND APPEAL NO.848 OF 2012

BHAGWAT DADARAO GAIKWAD
VERSUS
VITHALRAO DADARAO AMBAD AND ANR

...
Advocate for Appellant : Mr. Suryawanshi Kamlakar J.
Advocate for Respondents No.1 and 2 : Mr. Shinde Anand S. (Absent)

...
CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 30-08-2021.

ORDER :

1. Present appeal has been filed by the original plaintiff to challenge the concurrent Judgment and decree. He had filed Regular Civil Suit No.309 of 1996 before 2nd Joint Civil Judge, Junior Division, Kaij, District Beed, for cancellation of sale deed and injunction. It came to be dismissed on 07-02-2000. He challenged the same before District Court, Ambajogai by filing Regular Civil Appeal No.49 of 2000. The said appeal was heard by learned District Judge-2, Ambajogai and it was dismissed on 19-04-2010. Hence, the present second appeal.

2. Heard learned Advocate Mr. K. J. Suryawanshi for the appellant. Learned Advocate Mr. A. S. Shinde for respondents No.1 and 2 is absent.

3. It is an admitted position that the plaintiff executed the sale

deed in respect of suit land on 29-04-1980 in favour of defendant No.1. However, the plaintiff had come with a case that as he was in need of money, he had asked defendant No.1 to give a loan. Plaintiff was in need of an amount of Rs.2000/- for the marriage of his daughter. Defendant No.1 agreed to pay the same on the condition that the plaintiff should execute a conditional sale deed towards the security of the hand loan. Accordingly, the plaintiff as he was in need of money, executed the sale deed, however, it was not acted upon, it was Sham document. According to the plaintiff, the possession was with him. Even on the date of the suit, it was contended that the plaintiff is in possession. According to the plaintiff, he tried to repay amount of Rs.2000/- in March 1996 to defendant No.1. The amount was accepted, however, defendant No.1 refused to reconvey the property. Thereafter, defendant No.1 executed a sale deed in favour of defendant No.2 on 07-05-1996. Hence, the plaintiff prayed for the cancellation of the sale deed dated 29-04-1980 and declaration that the sale deed executed by defendant No.1 in favour of defendant No.2 is not binding on him.

4. The defendants have resisted the claim of the plaintiff by filing written statements. It was submitted that it was an out and out

sale.

5. After the evidence was led, both the Courts have come to the conclusion on the basis of the evidence as well as legal points that the plaintiff has failed to prove that the real transaction was different and in fact defendant No.1 had got the Sham document executed in his favour as a security for the hand loan. Both the Courts have held that the plaintiff has failed to prove that he is in possession of the suit land. It is held that the suit is not within limitation and, therefore, the suit was dismissed and then the appeal was also dismissed.

6. At the outset, the facts are also very much clear and on the face of the record itself it can be seen that the suit appears to be beyond the period of limitation. Even if for the sake of arguments we accept that the real nature of the transaction was different, yet it is hard to believe that a time for the repayment would not have been stipulated under the oral contract. For the amount that was taken around the sale deed dated 29-04-1980, the duration for repayment could not have been for an indefinite period. Plaintiff's own case is that it was repaid in March 1996 i.e. after about 16 years.

7. Perusal of the contents of the sale deed though it appears that there was some legal hitch raised by the lower Court to exhibit the same, yet even if for the sake of arguments we consider the contents of the same, they do not appear to be of a conditional sale deed. Those conditions of the repayment are not embodied in the document itself. When the sale deed was executed on 29-04-1980, the suit for cancellation of that document in the year 1996 is definitely beyond limitation as per Section 59 of the Limitation Act. Interestingly no relief appears to have been prayed for the reconveyance in specific words because if the suit would have been for reconveyance and as per the terms the repayment that was done after 16 years of the period was as per the terms itself then in that event there was a possibility of holding the suit within limitation, however, plaintiff has not come with such pleadings. Simple cancellation of sale deed that was executed 16 years ago was definitely hopelessly barred.

8. It has been tried to be contended on behalf of the appellants that the sale deed was not exhibited and has not been properly considered. So also the fact that for about eight to nine years, the name of the plaintiff continued in the 7/12 extract has not been

considered by both the Courts below. Mere continuation of the name of the plaintiff in the 7/12 extract, cannot be taken as a circumstance to prove that the sale deed was Sham. When the plaintiff intended to give oral evidence in respect of some other transaction which was not contemplated or not included in the sale deed i.e. the documentary evidence, then such oral evidence (because it would be beyond the scope of Section 92 of the Indian Evidence Act) ought to have been strong enough. When every fact was within the knowledge of the plaintiff, he slept over his alleged rights for about 16 years. The law will not help such persons who are sleeping over their rights.

9. The concurrent findings have been arrived at after considering the oral, documentary evidence as well as the law points involved and, therefore, in view of *Kirpa Ram (since deceased through L.Rs.) and Others vs. Surendra Deo Gaur and Others*, reported in 2021 (3) *Mh.L.J.* 250, as no substantial questions of law are being pointed out as contemplated under Section 100 of the Code of Civil Procedure, the second appeal stands dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

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signed by
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VIRENDRA
J
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