

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

17 SECOND APPEAL NO.109 OF 2021

MADHUKAR BABURAO NALAGE

VERSUS

SANTOSH SUBHASHAPPA MUKTA

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Mr. E.S. Murge, Advocate h/f Mr. Anandsingh Bayas, Advocate for the
appellant

Mr. R.K. Ashtekar, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09th AUGUST, 2021

ORDER :

1 Present appeal has been filed by the original plaintiff challenging the concurrent findings. He wants to challenge the Judgment and Decree passed in Regular Civil Suit No.419/2010 filed by him, for declaration that the sale deed dated 10.04.2000 is null and void and it was executed for the purpose of security of hand loan. The consequential prayer of possession has been claimed, contending that the respondent has dispossessed him after about 10 years of the sale deed. The said suit came to be dismissed by learned Civil Judge Junior Division, Ausa, Dist. Latur on 23.07.2015. He had

challenged the same before District Court, Latur by filing Regular Civil Appeal No.139/2015. Learned District Judge-3, Latur dismissed the appeal on 09.03.2018. Hence, present Second Appeal.

2 Heard learned Advocate Mr. E.S. Murge holding for learned Advocate Mr. Anandsingh Bayas for the appellant and learned Advocate Mr. R.K. Ashtekar for the sole respondent. In order to cut short it can be said that they have argued in support of their respective contentions.

3 It is to be noted that the fact that was admitted is that the plaintiff's father was the owner of land Sy.No.123/D situated at Ausa, Tq. Ausa, Dist. Latur. He had executed sale deed on 10.04.2000 in favour of defendant. Now, in the suit that was filed on 21.12.2010 the plaintiff contends that his father was addicted to liquor and he was in the politics, therefore, he had incurred huge loan. Defendant's father Subhashappa was doing money lending business, illegally. Plaintiff's father had taken loan of Rs.1,00,000/- in the month of March, 2000 from the father of the defendant. Sale deed was executed in respect of suit property by him in favour of defendant's father, however, it was sham and bogus and not to be acted upon. Possession of the suit property was not given to the defendant. According to the plaintiff, the said amount was to be returned by his father along with interest @ 16%. Plaintiff contends that he had requested the defendant that

he should accept the amount of the loan together with interest and re-convey the property. Defendant refused, and therefore, he filed the said suit. Defendant in his written statement resisted and it was stated that it was the out and out sale and he was put in possession of the property on the day of sale. He has erected a structure in the suit property and with the prior permission and licence granted by the State Government he is running a liquor shop.

4 Except bare words, it appears that there was no evidence adduced by the plaintiff. He wants to contend something in contrary to the contents of the sale deed, when he comes with the case that there was a separate agreement than what was decided and written in the sale deed. Even if we keep aside the bar under Section 91 and 92 of the Indian Evidence Act; yet, it is to be noted that the plaintiff as well as his witness, who was allegedly present at the time of sale deed, are not consistent. There is absolutely no evidence adduced by the plaintiff, showing that he had repaid the amount of Rs.1,00,000/- together with interest. The interest rate was huge. Therefore, what was repaid by him, if at all he is to be believed, would be a huge amount, and therefore, unless and until proof about return of that amount is led, we cannot find any substance in the statement of the plaintiff. The wordings, that those have been used, are that he had called upon the

defendant to re-convey the property after accepting the loan amount with the interest suggests that absolutely no amount was paid between the period from 2000 – 2010. If the real intention of the plaintiff or his father was to take the amount for mitigating loan and the real nature of transaction was something different, then definitely they would have attempted to repay the amount. It has not come on record, as to whether the plaintiff's father is alive or not and if he is not alive, then when he expired, why he has not filed the suit in his name or if he is not alive, then why there was no attempt by him to institute a suit, immediately after the repayment of the loan. All these questions are left unanswered. Merely, because the plaintiff is saying that, that transaction was sham and bogus, we cannot accept. Further, except the bare statement, there is no evidence to show that plaintiff had not parted with the possession of the suit property. It has been rightly considered by the learned Trial Judge that as per the plaintiff, the sale deed was for an area admeasuring 80' x 80', however, the sale deed states that in all four plots were sold, each admeasuring 40' x 40'. The total area, that was sold, was 6400'. The witness, who was examined by the plaintiff, appears to be not the witness on the document. Rather the attesting witness has been examined by the defendant. It also appears that plaintiff was not present when the sale deed was executed. It is on the basis of a fact that is seeking is not appearing on the sale deed.

5 When both the Courts below have correctly assessed the evidence and the law points involved are correctly considered, it will not give rise to any substantial questions of law. As the substantial questions of law have not been shown, the appeal deserves to be dismissed at the threshold. Accordingly, it is dismissed. No order as to costs.

(Smt. Vibha Kankanwadi, J.)

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