

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.7286 OF 2019
IN SAST/29369/2019

VITTHAL S/O RAMBHAU GHUTE
VERSUS
RAMKRUSHNA S/O VYANKATRAO MALI

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Mr. M. D. Shinde, Advocate for the appellant .
Mr. S. N. Rodge, Advocate for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21.09.2021

ORDER :-

. Present civil application has been filed for getting the delay of 297 days condoned in filing second appeal. Present applicant is the original defendant, who wants to challenge the concurrent judgment and decree, however, there is delay of 297 days.

2. Though the learned Advocate for the respondent has strongly opposed the application, taking into consideration the reasons given in paragraph No.3, the delay stands condoned.

3. Application stands allowed and disposed of.

4. Registry to verify and register the second appeal.

5. The second appeal is then taken up for admission with consent of

both the parties immediately.

6. Learned Advocate for the appellant submitted that both the Courts below have taken perverse view. Admittedly, the appellant is in possession of the property, however, he had contended that he himself is the owner of the property. Agreement to sell was executed by the vendor of the plaintiff in his favour, however, there was a hand loan of Rs.30,000/- from the respondent and, therefore, that document of sale-deed came in existence between the vendor of the plaintiff and the plaintiff. In fact, that sale-deed is nominal and it has not given any right, title or interest in favour of the plaintiff. The present appellant has made construction by taking permission from the local authority. No objection was raised by the plaintiff at any point of time. Under such circumstance, the suit ought to have been dismissed and the appeal ought to have been allowed when it was pointed out to the first Appellate Court that the learned Trial Judge erred. Substantial questions of law are arising in this case requiring admission of the second appeal.

7. Per contra, learned Advocate appearing for the respondent relied on the reasons given by both the Courts below and submitted that no substantial questions of law are arising in this case.

8. At the outset, it is to be noted that the plaintiff had come with the specific case that he purchased a plot admeasuring 40 ft. x 40 ft. in Gut No.294 situated at village Murud, Tq. and Dist. Latur from one Bharat Bapurao Gangthade. The plaintiff's premises is towards the norther side of plot No.5 and southern side of plot No.6 in the said gut number. A registered sale-deed was executed on 09.02.2000 in his favour. He, thereafter, constructed two rooms up to lentil level and lay down roof of tins. Defendant was his friend. Defendant requested him in the year 2005 to allow him to reside in the said premises and accordingly, he had allowed the defendant to reside in the said premises. Now, the plaintiff want to make further construction and, therefore, asked the defendant to vacate the suit property, but he denied. Hence, the suit was filed.

9. Defendant had come with the case that he himself is the owner of the suit property. Agreement to sell was executed in his favour by said Bharat Baburao Gangthade. He paid amount of Rs.50,000/- to Bharat at that time and then it was contended that he had taken loan of Rs.30,000/- from the plaintiff on interest and for the security of loan, the sale-deed was executed in the name of plaintiff. After purchasing the suit plot, he has constructed those two rooms.

10. Both the Courts below have held that the plaintiff has proved his ownership over the suit property and the fact that defendant was put in

permissive possession of the suit property. Hence, the suit was decreed on 30.07.2014 by learned 4th Joint Civil Judge Junior Division, Latur and the Regular Civil Appeal No.134 of 2014 was dismissed by learned District Judge-4, Latur on 08.08.2017.

11. It is to be noted that the plaintiff had produced the sale-deed and had also examined one Bhausahab Ghute, who was attesting witness to the sale-deed. Interestingly, said Bharat Bapurao Gangthade was examined by defendant as D.W.2. In his cross-examination, he has stated that he executed sale-deed in favour of the plaintiff. It appears that he has also stated about the agreement to sell which was executed in favour of the defendant. However, it can be seen that the defendant has not pleaded nor proved, that he had ever returned that amount of Rs.30,000/- to the plaintiff and had taken any legal step to get the sale-deed executed in his favour. On the contrary and surprisingly, the defendant has not produced the said agreement to sell which was allegedly got executed from Bharat in his favour. Therefore, definitely, inference was required to be drawn against the defendant. Another fact is that even if for the sake of arguments we accept that such document was created, yet, that document could not have given ownership rights to the defendant. Agreement to sell cannot create ownership rights, but only a right to get sale-deed executed at the most can be said to be

arising because of execution of such document. Both the Courts below have further assessed the oral evidence and have come to the conclusion that how the defendant has travelled beyond the pleadings and led evidence to contend that the loan was taken with interest at the rate of 5% per month and it was to be refunded within two years. The defendant has not stated in specific words, but then the witness examined by him i.e. D.W.5 is saying that after six months of the transaction, he came to know that the defendant had repaid the loan amount to the plaintiff. Thus, when even the exact date of agreement to sell has also not been proved, the defendant cannot claim ownership over the suit property. When admittedly the sale-deed has been executed by Bharat in favour of the plaintiff, he would become the owner of the property. No other status has been claimed by the defendant, though he is admittedly possessing the property and, therefore, it will have to be held that the possession of the defendant over the suit property is permissive in nature. Both the Courts below have taken correct view after assessing the evidence adduced by both the parties. It is not giving rise to any substantial question of law as contemplated under Section 100 of the Code of Civil Procedure. Hence, the second appeal stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

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