

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****Second Appeal No.146 of 2018**

RAGHOJI KUNDLIK JATALE

VS

GAMBHIRRAO RAMRAO DESHMUKH

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Vijaykumar Paliwal, Advocate for the Appellant

Shri D.R. Khapre, Advocate for the Respondent

CORAM : ANIL S. KILOR, J.

DATED : 06th DECEMBER, 2021

This appeal is arising out of the concurrent findings recorded by the both the Courts-below in the suit for cancellation of sale deed dated 07.03.2005, while denying the decree in favour of the plaintiff.

2. The brief facts of the present case are as follows: (The parties are referred to as per their status before the trial Court)

3. The plaintiff filed a suit claiming that the sale-deed executed on 07.03.2005 was nominal sale-deed and it was out of a money lending transaction. It is further contended that on the date of filing of the suit the plaintiff was in possession of the suit land, which is sufficient to show that the transaction was a nominal one.

4. It is further case of the plaintiff that during the pendency of the suit the defendant took possession of the suit land forcibly and therefore, the application was made for amendment, but it was rejected. The defendant filed his written statement and resisted the suit.

5. The learned trial Court after considering oral as well as documentary evidence dismissed the suit vide judgment and decree dated 23.04.2010 in Regular Civil Appeal No.32 of 2007, which was the subject matter in the appeal filed by the plaintiff before the Principal District Judge, Washim in Regular Civil Appeal No.78 of 2010. The same came to be dismissed by the judgment and decree dated 29.09.2017, which is under challenge in the present appeal.

6. I have heard learned counsel for the respective parties.

7. Shri Paliwal, learned counsel for the appellant/plaintiff submits that both the Courts-below have not considered the fact that the sale deed executed on 07.03.2005 was out of the money lending transaction and therefore, both the Courts-below ought to have held that the sale-deed under challenge i.e sale deed dated 07.03.2005 was a nominal sale-deed. It is further submitted that both the Courts-below have not considered the fact of possession in right prospective and held that the sale deed was not the nominal sale-deed.

8. Per contra, Shri Khapre, learned counsel for the respondent/original defendant points out that there is a concurrent findings

holding that the plaintiff has failed to prove the fact that the sale-deed dated 07.03.2005 executed in favour of the defendant by the plaintiff in respect of the suit property was a nominal one and executed out of the money lending transaction. It is argued that in second appeal unless perversity is pointed out in the finding of fact recorded by the both the Courts-below, this Court cannot interfere with the same.

9. To consider the rival contentions of the parties, I have gone through the record and also perused the judgments and decree of the both the Courts-below.

10. After going through the record it is revealed that both the Courts-below have concurrently held that the plaintiff has failed to prove that the sale-deed dated 07.03.2005 executed by him in favour of the defendant, was a nominal one.

11. Both the Courts-below have further held that the plaintiff has not produced any cogent and reliable evidence in support of his case on record.

12. Both the Courts-below have also considered the fact that the amendment application was moved by the plaintiff, alleging that during the pendency of the suit the defendant has forcibly taken possession of the suit property.

13. Both the Courts-below, after discussing the oral as well as documentary evidence in detail, have held against the plaintiff and denied the decree as sought by the plaintiff.

14. In absence of any perversity pointed out by the plaintiff in the concurrent findings of fact recorded by the both the Courts-below against the plaintiff, I do not find any merit in the present appeal and as no substantial question of law is involved in the present appeal, the appeal is **dismissed**.

15. No order as to costs.

[ANIL S. KILOR, J.]