

BDP-SPS-TAC

BHARAT
DASHARATH
PANDITDigitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2022.10.20
18:04:13 +05'30

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 313 OF 2022
ALONGWITH
INTERIM APPLICATION NO.18312 OF 2022**

Laxman Balappa Pujari and Ors. Appellants.
V/s
Mahadeo Shamu Mandle and Ors. Respondents.

Mr. Ajay A. Joshi for the Appellants.

**CORAM: NITIN W. SAMBRE, J.
DATE: OCTOBER 10, 2022**

P.C.:-

1] Heard Mr. Joshi, learned Counsel for the Appellants/original Defendants.

2] Suit property consists of agricultural land admeasuring 3 Hectares 65 R out of 7 Hectares 96 R bearing Gat No.199, which was agreed to be sold vide agreement of sale dated 18/5/1993 i.e. Exhibit-22. Agreed consideration was Rs 45,000/- out of which at the time of executing Exhibit-22, Rs 30,000/- were already received. Since the suit property is covered under the provisions of Maharashtra Tenancy and Agricultural Lands Act (For short "MT & AL Act") Appellants/Defendants were given burden of procuring permission under Section 43 of the MT & AL Act. Sale Deed was to be executed within 11 months, which period was to exclude the period consumed for obtaining permission from the competent authority.

3] It appears that the Appellants initially failed to attend the suit, resulting into passing of ex parte decree which was set aside in MCA No.15 of 2002. Subsequent thereto, Appellants appeared and tendered their Written Statement at Exhibit-35 which was adopted by other

Defendants/Appellants. The defense set up by the Appellants was that of money lending transaction. Trial Court after framing issues at Exhibit-44 decreed the suit, thereby observing that Respondents were ready and willing to perform their part of the contract. The judgment and decree dated 27/3/2015 passed by the Civil Judge, Junior Division in Regular Civil Suit No. 197 of 2000 was confirmed in Regular Civil Appeal No.85 of 2015 decided on 19/3/2020 by Ad-hoc District Judge-1. As such, this Second Appeal.

4] Mr. Joshi, learned Counsel for the Appellants tried to canvass two contentions viz (a) defense of the Appellants of money lending transaction was not properly appreciated as according to him, Trial Court incorrectly caste burden on the Appellants/Defendants and (b) in absence of permission under Section 43 of the MT & AL Act, whether suit could have been decreed in view of express statutory embargo.

5] I have appreciated said submissions.

6] Trial Court has specifically framed issue No.6 as to whether suit transaction was money lending transaction or not and rightly so cast initial burden on the Appellants to prove the same which Appellants have failed to. Appellants have also not adduced any evidence to discharge initial burden to prove that Agreement-Exhibit-22 or time extension agreement – Exhibit-28 was in the form of money lending transaction.

7] In view of above, it cannot be said that Trial Court committed an error in recording finding on the issue of money lending transaction.

8] As far as issue as regards permission under Section 43 of the MT & AL Act is concerned, issue is squarely covered by the judgment of this Court in the matter of *Balu Baburao Zarole and Ors. vs. Shaikh Akbar Shaikh Bhikan* reported in **AIR 2001 Bom. 364** . Trial Court, so also, Appellate Court were conscious of the fact that the suit property is hit by the provisions of Section 43 of the MT & AL Act. Considering the fact that it was for the Appellants to secure such permission against which they have already accepted 80% of the consideration, the Court made it obligatory to have the permission from the competent authority as contemplated under Section 43 of the Act before getting the Sale Deed executed.

9] Both the Courts below as such have concurrently held that case put-forth by the Appellants of money lending transaction and absence of readiness and willingness of the Respondents is not made out and rightly held against the Appellants.

10] Second Appeal, in my opinion, is devoid of any substantial question of law which is preferred against the concurrent findings and same is dismissed. As a consequence pending Interim Application also stands dismissed.

(NITIN W. SAMBRE, J.)