

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO.303/2019

Narayan Zitruji Dandge (Dead)
Through his Legal Heirs

- A) Smt. Anusayabai Narayan Dandge
(dead)
- B) Smt. Durga Dadaraoji Yeole,
Aged about 56 years,
Occ. Agriculturist, R/o Sirsi,
Post Sirsi, Tah. Umred,
District- Nagpur.

...APPELLANTS

VERSUS

Sau. Sandhya w/o Kamlakishor
Mandhaniya, aged about 44 years,
Occ. Business, R/o Ram Mandir
Ward, Hinganghat,
Tah. Hinganghat, District- Wardha.

...RESPONDENT

Shri B.B. Pantawane, Advocate for Appellants.
Shri P.P. Kotwal, Advocate for Respondent.

CORAM : SMT. M.S. JAWALKAR J.,

DATE OF RESERVING THE JUDGMENT : 23/06/2022
DATE OF PRONOUNCING THE JUDGMENT: 07/07/2022

ORAL JUDGMENT

Heard both the parties.

2. Being aggrieved by the judgment and Decree passed by the learned District Judge, Hinganghat in Regular Civil Appeal No.75/2017 dated 04/02/2019 arising out of Judgment and Decree passed in Regular Civil Suit No.21/2003 decided by the learned Civil Judge Junior Division, Hinganghat, District Wardha dated 02/09/2014, the present appeal is filed. The present appellant/plaintiff filed suit for cancellation of sale deed and injunction whereas defendant has filed counter claim for possession.

3. The claim of the plaintiff can be gathered from the plaint as under:

The plaintiff was exclusive owner and possessor of house No. 224 and 278/234 situated on Nazul Plot No. 20/2, 21, and 20/3 situated at Fule Ward, Hinganghat admeasuring 994 sq. ft. out of which 560 sq.ft. area is disputed between both the parties which is referred as suit house. It is contention of plaintiff that the husband of defendant and his family are closely acquainted since long 30 years. Plaintiff was old man and having no source of

income. He borrowed Rs.10,000/- for his household needs from the defendant. The defendant demanded money from plaintiff with heavy interest. However he was not in a position to pay therefore plaintiff had executed the nominal sale deed in favour of defendant on 11/02/2000. It was agreed that the said sale deed was not to be acted upon and it was executed only for the purpose of security without receiving any kind of consideration. It was further agreed that on repayment of loan amount defendant will re-convey the title of suit house in favour of plaintiff. However taking undue advantage defendant dispossessed the plaintiff from the house. The plaintiff issued notice to defendant on 07/05/2002 and ask him to execute the conveyance of suit house and for cancellation of sale deed on receipt of loan amount of Rs.11,000/-. There was no response the plaintiff constrained to file suit for cancellation of sale deed and injunction.

4. There was counter claim filed by the defendant to which plaintiff has filed written statement and denied the allegations made by defendant. The defendant categorically denied all contentions in the plaint and pleaded that plaintiff and his daughter executed the sale deed before the Sub Registrar in

presence of two panchas. It is further contention of defendant after execution of sale deed plaintiff requested to retain the possession of the suit house for three months as a licensee of defendant and same was allowed by defendant considering the good relationship with the plaintiff. He further requested for extension for one year, in view of his household difficulties. After one year the defendant has not extended the tenure of licences and asked for possession of the suit premises. It is pleaded that possession of the plaintiff from expiry of one year has become as a trespasser. Therefore, defendant has filed the counter claim for possession of suit house and past mesne profit of Rs.17,000/- and for future mesne profit. Learned Trial Court dismissed the suit and partly allowed the counter claim.

5. Legal representatives of plaintiff i.e. daughter of plaintiff Sau. Durga Yeole deposed that she was not residing with her father (plaintiff) at the time when transaction of hand loan had taken place. In her chief she deposed that her father obtained loan from defendant time to time. In cross she deposed that her father demanded Rs.30,000/- but defendant gave only Rs.10,000/-. As Durga was not residing with her father at the time of handing over of alleged loan and there is no other corroborative evidence about

obtaining of hand loan, trial Judge rightly answered issue No.1 in the negative. As such the issue in respect of execution of sale deed as a security also failed, the learned Trial Court rightly appreciated the evidence of P.W.1- Durga was admitted in cross examination that she did not know under which circumstances the said disputed sale deed was executed as her father had not given any information to her as to condition in which he had executed the sale deed. Moreover, there is no recital in disputed sale deed that the same was executed as a security and defendant will re-convey the title after repayment of loan amount.

5. It has come on record that P.W. 1-Durga was consenting party to the said document and her husband was attesting witness to the same. Plaintiff has not examined her husband in order to prove the contrary. As disputed sale deed is registered document, there is presumption in favour of defendant regarding the execution of sale deed. The P.W. 1- Durga herself admitted execution of sale deed however failed to prove that sale deed was executed as security. The plaintiff also failed to place on record any notice which claimed to be sent to the defendant dated 07/05/2002 so as to establish that the sale deed which was alleged

to be executed as security to re-convey the same as plaintiff was ready and willing to pay the loan amount. There is even nothing on record to show readiness and willingness. As such plaintiff failed miserably to establish her claim.

6. The defendant purchased the property by registered sale deed has every right to mutate her name over the suit house and there is no illegality whatsoever in such act as that can be seen from the sale deed the possession of the suit house was given to the defendant by plaintiff. Defendant allowed plaintiff to remain in suit property considering his difficulty. So possession of the plaintiff in the suit house after execution of sale deed was permissive. Though it is claimed by the plaintiff that notice dated 07/05/2002 was issued to the defendant. It was not placed on record. In view of this evidence on record, I do not see any perversity or illegality in the judgment and order passed by the learned Trial Court.

7. So far as mesne profit is concerned, it was awarded on the admission given by PW 1- Durga that the property would have fetched Rs.500/- per months. Learned Appellate Court recorded concurrent finding on the basis of evidence placed on record.

Admission on the part of appellant herein are itself sufficient to reject the claim of the plaintiff. In view of these concurrent findings by both the Courts below which are neither perverse nor illegal, I do not see any substantial question of law involved in the present matter and appeal is liable to be dismissed. Accordingly appeal is dismissed.

(SMT. M.S. JAWALKAR, J.)

R.S. Sahare

