

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 198 OF 2016

Ramling S/o Nana Ambirkar
(Deceased through LRs)

Appellant

Versus

Arun S/o Manohar Panchutre

Respondent

Mr. S. S. Chaudhary, Advocate for the appellant.
Mr. P. K. Deshmukh, Advocate for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 13th MARCH, 2023.

PER COURT :

1. This second appeal takes exception to the judgment and decree dated 30th October, 2015 passed by the District Judge -3, Osmanabad in Regular Civil Appeal No. 82/2009 and the judgment and order dated 15th January, 2009 passed by the Civil Judge Junior Division, Kallam in Regular Civil Suit No. 179/1988.

2. On the point of scope of present appeal, it is well settled position of law by catena of judgments of Hon'ble Apex Court that the Court has no jurisdiction to interfere with findings of fact on the ground that they are erroneous. Interference is possible only if there

is any perversity or illegality in the judgments of Courts below or total absence in considering the evidence available on record or misreading of evidence. There must involve a substantial question of law to entertain second appeal. In this regard reference can be made to the judgment of the Hon'ble Apex Court in case of Ramathal vs. Maruthathal and others, **AIR 2018 Supreme Court 340**, wherein it is observed thus :-

“15. A clear reading of section 100 and 103 of the CPC envisages that a burden is placed upon the appellant to state in the memorandum of grounds of appeal the substantial question of law that is involved in the appeal, then the high court being satisfied that such a substantial question of law arises for its consideration has to formulate the questions of law and decide the appeal. Hence a prerequisite for entertaining a Second appeal is a substantial question of law involved in the case which has to be adjudicated by the high court. It is the intention of the Legislature to limit the scope of second appeal only when a substantial question of law is involved and the amendment to section 100 makes the legislative intent more clear that it never wanted the High Court to be a fact finding court. However, it is not an absolute rule that high court cannot interfere in a second appeal on

a question of fact, Section 103 of the CPC enables the High Court to consider the evidence when the same has been wrongly determined by the courts below on which a substantial question of law arises as referred to in Section 100. When appreciation of evidence suffers from material irregularities and when there is perversity in the findings of the court which are not based on any material, court is empowered to interfere on a question of fact as well. Unless and until there is absolute perversity, it would not be appropriate for the High Courts to interfere in a question of fact just because two views are possible, in such circumstances the High Courts should restrain itself from exercising the jurisdiction on a question of fact.

3. The plaintiff filed suit for redemption of mortgage. It is the case of the plaintiff that on 20th June, 1984, a mortgage by conditional sale was executed in favour of the defendant on acceptance of Rs. 5,500/- (Exhibit 87) with a condition to repay the same on or before 19th June, 1988. Since the defendant refused to redeem the mortgage inspite of notice dated 17th May, 1988 (Exhibit 105), the present suit came to be filed for redemption of mortgage of the suit land and possession thereof.

4. Defendant denied the claim of the plaintiff and it is contended that the document dated 20th June, 1984 is a sale transaction and not mortgage by conditional sale.

5. In order to appreciate and determine the nature of transaction, it must be tested on the basis of terms of the instrument. Perusal of the document in question indicates that it is titled as conditional sale. Apart from this, the other evidence placed on record clearly indicates that on the basis of the same document, the defendant had got his name mutated in the revenue record vide Mutation Entry No. 443 (Exhibit 113). The said entry corresponds to the nature of the document. There is evidence on record in order to show that defendant without license of money lending transacted with plaintiff and others and he used to return the stamp paper or tear it after receipt of principal amount with interest. Thus, there is sufficient evidence to hold that it was a transaction of money lending and by way of security, mortgage on conditional sale came to be executed.

6. Oral evidence of plaintiff and other witnesses coupled with recitals of document prove that the transaction in question was

never intended to sell suit property. On the other hand defendant was unable to rebut the said evidence. The only contention of defendant is that he being illiterate, plaintiff has obtained document in his favour without reflecting correct transaction. There is no material evidence on record to substantiate the said claim. No action is however taken by defendant, if it was his case that the document in question was obtained by plaintiff by taking disadvantage of illiteracy. On the contrary application made by him to Revenue Authority for mutation of his name also indicates the nature of transaction between parties.

7. In the instant case, learned trial Court as well as the First appellate Court have considered the evidence on record in its proper perspective. The appellant herein has failed to show any perversity of whatsoever nature in the findings recorded by both the courts below. Thus, in this case, no error on facts or law occurred while passing impugned judgments to call them as perverse. No substantial question of law is involved in this second appeal.

8. In the result, appeal is devoid of merit hence stands dismissed. No order as to costs.

9. Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb