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**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 230 OF 2014
WITH
CIVIL APPLICATION NO.3399 OF 2014
IN
SECOND APPEAL NO. 230 OF 2014

Umar S/o Akhatar Sayyad
and others

.. Appellants

Versus

Habib S/o Ali Sayyad

... Respondent

...
Mr.V.M. Humbe – Advocate for Appellants
Mr. N.S. Tekale – Advocate for respondent

....
CORAM : GAURI GODSE, J.
DATE : 18th January, 2023

PER COURT :

1. This second appeal is preferred by the original plaintiffs against dismissal of the suit by judgment and decree dated 17th August, 2007 passed by the Civil Judge, Junior Division, Bhoom in Regular Civil Suit No.55 of 2001 and confirmed in Regular Civil Appeal No. 231 of 2007 by Adhoc District Judge-1, Osmanabad vide judgment and decree dated 12th November, 2013.
2. The present appellants are the original plaintiffs, who have filed the suit for declaration of title as well as possession of the suit property being land block no. 258 admeasuring 5 hector 4 R

situated at village Chumbli, Taluka Bhoom. It is the case of the appellants that the sale deed dated 26th March, 1981 stood cancelled and is not binding upon the plaintiffs. It was the case of the plaintiffs that plaintiff no.4 was original owner of the suit land and she allotted the suit land to plaintiff nos.1 to 3 in the form of partition. It is further contended that the sale deed dated 26th March, 1981 executed by plaintiff no.4 in favour of the defendant was for the purpose of security of loan, and hence, after repayment of the loan, the same stood cancelled.

3. Trial court has framed issues on the point of interpretation of the said sale deed. After appreciating the evidence on record as well as the documents, the trial court recorded a finding that by way of sale deed dated 26th March, 1981, plaintiff no.4 transferred the title and possession of the suit land to the defendant and there was no transferable interest in favour of plaintiff no.4. Hence, she had no right to allot the suit land by way of partition as sought to be contended by the plaintiffs. With respect to the contention of the plaintiffs that the sale deed was sham and bogus document and that, it was not a sale deed, the trial court has considered the same on the basis of the material on record. There is a specific finding recorded by the trial court that the execution of the sale deed is

not disputed by the plaintiffs, however, it was contended by them that the period of loan amount for which the document was executed on 25th March, 1981 was for five years and that loan has to be repaid within five years, hence the case of the plaintiffs for repayment of loan and re-conveyance would be some time on 25th March, 1986. Hence if this case of the plaintiffs was to be considered, the suit for cancellation of the same was time barred.

4. These findings of fact recorded by the trial court are confirmed by the first appellate court by again framing similar points for consideration. First appellate court after re-appreciating all the evidence and documents has confirmed the findings recorded by the trial court.
5. Learned counsel appearing for the appellants submitted that the trial court has not framed proper issues with respect to the interpretation of the document, as pleaded by the plaintiffs. He further submitted that after execution of the sale deed, there was consolidation scheme implemented and in the consolidation scheme, the names of plaintiffs were entered into in suit land. He, therefore, submitted that the trial court has failed to frame proper issues and has failed to appreciate the evidence on record with reference to the specific case made out that in fact, the document

in question is not sale deed but it was in the of form of a mortgage and/or security for the repayment of loan. In support of these contentions, learned counsel for the appellants has relied upon numerous decisions of the Hon'ble Supreme Court, which are as under :-

- (i) ***Biswanath Agarwalla Vs Sabitri Bera and others***
(2009) 15 SCC 693
- (ii) ***V. Prabhakara Vs Basavaraj K. (Dead) By Legal Representatives and another***
(2022) 1 SCC 115
- (iii) ***State Government of Madhya Pradesh and others Vs. Narsingh Mandir, Chikhaldia and others***
(2019) 18 SCC 89
- (iv) ***Madhukar Nivrutti Jagtap and others Vs. Pramila Bai Chandulal Parandekar (Dead) through Legal Representatives and others***
(2020) 15 SCC 731
- (v) ***Bijay Kumar Manish Kumar (HUF) Vs. Ashwin Desai***
(2019) 2 SCC 334
- (vi) ***Municipal Committee, Hoshiarpur Vs Punjab State Electricity Board and others***
(2010) 13 SCC 216

6. I have perused the judgments of both the courts. So far as contention with respect to framing of issues is concerned, the trial court has framed the issue on the interpretation of sale deed and issue no.1 reads thus :

“1. Do the plaintiffs prove that the sale-deed No.210 executed by plaintiff No.4 in favour of defendant on 26.3.1981 was nominal ? – In negative-“

7. Apart from framing the issue of interpretation of the document of sale deed, the trial court has also framed the issues in respect of prayer for declaration of title as well as the prayer that plaintiffs are in lawful possession over the suit property. Perusal of both the judgments do not show that any document with respect to the consolidation scheme is produced on record. With this regard, learned counsel appearing for the appellants submit that though the document of consolidation scheme was not produced in the trial court, since the same raises a question of law, it should be considered for the first time in second appeal. It is difficult to accept such an argument, as neither the copies of the consolidation scheme were produced in the trial court nor any application has been produced before the first appellate court. Learned counsel further states that he has some copies of the consolidation schemes and expects from this Court to see the consolidation scheme for the first time in the second appeal. At the time of hearing the second appeal for admission any such document cannot be examined for the first time in second appeal. Hence there is no substance in such request and submissions made by the learned counsel for the appellants.

8. With respect to the proper appreciation of the documents as well as the oral evidence is concerned, the trial court has minutely interpreted the documents as well as the evidence on record. I do not find any perversity in the findings recorded by the trial court as well as first appellate court. Thus, the trial court and first appellate court by properly appreciating the evidence as well as documents on record have recorded a finding of fact with regard to contentions that are sought to be argued by the learned counsel for the appellants. Thus, the submissions are in respect of findings of fact and the second appeal does not involve any substantial question of law.
9. The decisions of the Hon'ble Supreme Court relied upon by learned counsel for the appellants are not applicable to the facts of the present case. Issues are properly framed in the present case. All the documents on record are properly examined. As requested by the learned counsel for the appellants no document tendered across the bar can be examined at the time of hearing of the second appeal. Hence, I do not find any substantial question of law involved in the second appeal. Second appeal is dismissed. There will be no order as to costs.

10. In view of the dismissal of the second appeal, civil application is also dismissed.

[GAURI GODSE]
JUDGE