



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 358 OF 2019

Motising s/o Kisansing Choudhary,
Since deceased through L.Rs.

- 1] Prithviraj Motising Choudhary,
Age : 66 Years, Occ. Business
- 2] Pralhad Motising Choudhary
Age : 59 Years, Occ. Business
- 3] Deepak Motising Choudhary,
Age : 35 Years, Occ. Business

Appellant Nos. 1 to 3
R/o. Balaji Galli, New Jalna,
Taluka and District Jalna.

- 4] Lila Baldeo Gena
Age : 65 Years, Occ. Household,
R/o. College Road, Jalna
District Jalna.

..Appellants
(Org. Plaintiff)
(Appellants in FA)

VERSUS

Bhagwatibai w/o Omprakash Choudhary,
Age : 45 Years, Occ. Household,
R/o. Shivaji Nagar (Mhada) Jalna.

.. Respondent
(Org. Defendant)
(Respondent in FA)

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Advocate for Appellants : Mr. S. P. Shah
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CORAM : S. G. MEHARE, J.

Dated : December 19, 2023

PER COURT :-

1. Heard the learned counsel for the appellants.
2. This is second appeal against the two concurrent judgments against the appellants. The appellants were the plaintiffs. The plaintiffs had filed a suit for declaration that the sale deed was obtained by fraud and misrepresentation. Both Courts, on appreciating the facts held that the plaintiff failed to prove that the fraud was played and the sale deed was obtained by misrepresentation. It has also been held that the plaintiff failed to prove that his mental condition was not good.
3. The learned counsel for the appellants has vehemently argued that both Courts did not consider the cumulative effect of each circumstance that establishes the fraud, misrepresentation and the sale deed is without consideration. He also vehemently argued that the defendant took the advantage of strained relationship between the plaintiff and his sons. The situations, were also not considered that since there were quarrels with the sons, the defendant trapped him. He also argued that the possession of the suit premises was never handed over. Normally, the purchaser would not wait till the suit

premises is vacated. He further added that both Courts failed to appreciate the evidence correctly. Therefore, they arrived at the wrong conclusion. He submits that playing fraud and misrepresentation along with no consideration towards the sale transaction are the substantial questions of law involved in this case.

4. The Court had gone through the plaint. It appears from the plaint that the sons of the plaintiff had filed a suit for injunction restraining him from not alienating the suit premises. Hence, the sale transaction was executed. He was not residing in the suit premises. The plaintiff's family relations were disturbed. They had a dispute over the lands and properties. The plaintiff was to leave the suit premises and had to reside in the rented premises near the house of his daughter. So, it could be inferred that he went to the shelter of his daughter. Playing fraud and misrepresentation are the questions of facts. It is to be specifically pleaded and proved. Both Courts have appreciated the evidence and arrived at the conclusion that the plaintiff utterly failed to prove that the sale deed was obtained fraudulently and under misrepresentation. The strained relationships between them, has also not been proved to the extent that the plaintiff never intended to sell the suit premises. Since the ground on which cancellation of the sale deed was sought, as observed above, were the

questions of facts. The last fact finding Court i.e. First Appellate Court also appreciated the facts correctly. In second appeal, the Court cannot reappreciate the evidence, unless the evidence is improperly appreciated or the Court did not consider the material available on record. It does not happen, in the case at hand. The Court did not find reasons to re-appreciate the evidence.

5. Considering the findings of both Courts, the Court is not satisfied that there are material or questions of substantial law involved in this case. Both judgments and decrees are legally correct and proper.

6. Hence, for the above reasons, the appeal stands dismissed at the admission stage.

(S. G. MEHARE, J.)

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