

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

SECOND APPEAL NO. 881 OF 2022

Sopan Bhaurao Daund (Deceased)
Through his Legal Heirs -

1. Suresh @ Savkar Sopan Daund,
Age : 59 years, Occu. : Agri.,
R/o. : Nipani Vadgaon, Tq. : Shrirampur,
Dist. Ahmednagar.
2. Anusaya Sopan Daund (Died),
3. Vimal Bhausahab Gaike (Deceased)
- 3A. Satish Bhausahab Gaike,
Age : Major, Occu. : Household/Agri.
R/o. : Gaike Mala, Shirdi, Tq. Rahata,
Dist. Ahmednagar

.. Appellants

Versus

Ranjana Nanasaheb Walunj,
Age : 48 years, Occu. : Household/Agri.,
R/o. : Nipani Vadgaon, Tq. Shrirampur,
Dist. Ahmednagar.
Now R/o. : Wakad Shirode,
Tq. Niphad, Dist. Nashik.

.. Respondent

Mr. Hemant U. Dhage, Advocate for the Appellants.
Mr. Yuvraj Kakade, Advocate h/f Mr. Nitin V. Gavare, Advocate for
Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 30th AUGUST, 2023.

P. C. :-

. Heard learned advocates for the parties.

2. The respondent had filed suit for redemption and for possession of the land mortgaged with the present appellant – defendant No. 1. It is the case that the suit land of 1H 9R out of land Gat No. 126 was mortgaged with the defendant No. 1 by executing conditional sale for an amount of Rs. 2,50,000/-. However, in spite of redemption of the loan amount the defendant did not execute reconveyance deed and therefore, the suit was filed. The learned Trial Court decreed the suit of recording the evidence of the parties. The said decree and order came to be challenged by the present appellant -defendant No. 1 in appeal. The learned District Judge -2, Shrirampur, however, rejected the appeal by confirming the findings recorded by the learned Trial Court. The appellants are therefore before this Court.

3. Learned advocate for the appellants restricted his submission only to the point that after taking the land in possession by way of mortgage the appellants have spent certain amount on improvement of the land. They dug a well and installed machinery for siphoning of water. He submits that, both the learned Courts below have not considered this fact. There is ample evidence on record by way of receipts and oral evidence of the witnesses who stated that, the appellants have spent certain amount on developing the land while digging the well. Thus, it is submitted that, the learned Appellate

Court has committed error of law by not considering this aspect and not granting the amount spent by the appellants towards improvement of the land. He relies upon the judgment in the case of Bhimrao Ramchandra Khalate (Deceased) through legal representatives Vs. Nana Dinkar Yadav (Tanpura) and another reported in (2021) 9 SCC 45. He relies upon Section 63 (a) of the Transfer of Property Act. He submits that, though there was evidence in the form of receipt about the amounts spent by them on the improvement, the same is not believed by both the learned Courts below. Non consideration of this evidence gives rise to substantial question of law.

4. Learned advocate for respondent vehemently opposes the appeal. He submits that, both the Courts below have categorically dealt with the evidence of the parties. The receipt which was produced by the appellants could not be proved by the appellants by giving cogent evidence. The learned Courts below have rightly observed that, the appellants have not examined a person who executed a receipt. It is also not proved that, as to who has issued the receipt for the said alleged improvement work. He submits that, it is admitted position that, when the amount was given by way of mortgage, there was already a well situated in the land. Thus, he submits that, no substantial question of law is involved in this appeal and prays for

dismissal of appeal.

5. This Court has gone through the judgments of both the learned Courts below and also the material on record. By considering the record this Court finds that, in the plaint itself there is an averment that in the suit land a well is situated. In the mortgage deed itself there is mention of the said well. It speaks about the right to fetch the water of well given to the appellants. Though there appears to be a specific clause in the mortgage deed to the effect that at the time of redemption the plaintiff – respondent shall pay the amount if any spent by the appellants for improvement, it is also specifically mentioned that the water from the well is not adequate and therefore, the appellants were permitted even to make improvement. On this, learned Appellate Court has recorded that, though the receipt is produced on record there is no evidence produced by the appellants on record to prove the receipt described of the said and also the contents. Though the contractor who allegedly executed the work of improvement of well is examined, still this receipt is not shown to him. Nothing is brought in his evidence to substantiate the pleadings of the present appellants. If the receipt was executed by the contractor who has carried the work, then naturally it could have been proved through the said contractor. The amount spent on the development is stated to be Rs. 75,000/- for

removing debris and digging well. However, for want of specific evidence both the learned Courts below have refused to grant any amount to defendant.

6. In the judgment in the case of **Bhimrao Ramchandra Khalate (Deceased) through legal representatives** (supra), the Hon'ble Apex Court has considered the provisions of Section 63 (a) of the Transfer of Property Act. There the defendant – mortgagee had carried certain improvement in the land. The mortgagee had enjoyed the mortgage property which compensated the user of the land and also the improvements made by the mortgagor. There the decree of redemption was passed, however, without giving any amount to the defendant towards improvement. The suit was not decreed. This Court finds that, the said judgment is not of much help to the appellants herein.

7. This Court finds that, there is no substantial question of law made out. Ultimately what Court has to see as to whether the party who asserts any fact has proved the said fact and whether he has laid sufficient proof to prove the said fact. This Court finds that, in this case the learned Courts below have rightly held that the appellants could not prove that they have spent the amount for improvement of the land and for that reason have rightly refused the appeal.

8. This Court does not find any substantial question of law made out to entertain the appeal. The appeal therefore deserves to be dismissed and the same is dismissed with no order as to costs.

(KISHORE C. SANT, J.)

PS.B.