

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

**SECOND APPEAL NO.420 OF 2023
WITH CA/9764/2023 IN SA/420/2023**

**SHARAS SHALIGRAM PATIL
VERSUS
RAJESH SURYANARAYAN SINGU AND ANR**

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Advocate for Appellant : Mr. Prashant Prabhakar Giri
Advocate for Respondent No.1 : Mr. N.S. Muthiyan

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CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 11, 2023

PER COURT:-

1. Heard learned counsel for the appellant and learned counsel for respondent no.1.
2. The respondent/original plaintiff has filed a suit for declaration that the sale deed in favour of appellant/defendant no.2 was not binding upon him and it was illegal, sham and bogus. Both Courts believed the plaintiff and decreed the suit and directed the present appellant/defendant no.2 to deliver the possession to the plaintiff within two months.
3. Learned counsel for the appellant would submit that both respondents were in collusion and they had cheated the appellant. He has paid the entire consideration by obtaining a loan from the bank. The bank had taken the search from the office of the Sub-Registrar. He had applied for calling the bank officers to prove that

there was a search, but it was turned down. The appeal against the said order was also dismissed. There was nothing on record to disbelieve that the present appellant was the bonafide purchaser. He has emphasized mainly on the ground that the issues were not properly framed as per pleadings. Hence, the judgment has been misdirected.

4. Learned counsel for respondent no.1/original plaintiff would submit that there was no pleading that both respondents were in collusion. Therefore, there was no question to frame the issue that it was a collusive suit between the plaintiff and defendant no.1. The entire aspects have been considered. The sale deed of present respondent no.1 was before in time; hence, would prevail over the subsequent transaction. The plaintiff was in possession but he was dispossessed under the guise of illegal, sham and bogus sale deed.

5. Perused the impugned judgments and orders. The proper issues based upon the pleading were framed. The defendant no.2/present appellant failed to prove that the present respondents have played a fraud with him. Both judgments and decrees appears legal, proper and correct. In view of the facts in issue and the findings recorded by both Courts, the Court does not find that substantial question of law has been involved in the present case. Hence, the appeal stands dismissed at admission stage.

6. Civil Application No.9764 of 2023 stands disposed of.

(S.G. MEHARE, J.)