

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.554 OF 2018

Navnath Dagdu Kamble

Appellant

versus

Pandurang Anant Hogale and another

Respondents

Mr. N. D. Kendre, Advocate for the appellants.

CORAM : R. M. JOSHI, J.

DATE : 25th APRIL, 2023.

PER COURT :

1. Heard.
2. This appeal is against the concurrent judgments of the Trial Court and First Appellate Court in Regular Civil Suit No. 62/2012 and Regular Civil Appeal No. 173/2015.
3. Plaintiff has filed suit for declaration that the sale-deed dated 16th February, 2008 is nominal one and that he never intended to sell the suit property and hence, the same is not binding on him. In this regard plaintiff averred that he was in need of money for the purpose of payment of Rs. 67,000/- in execution proceeding and hence he approached defendants for financial assistance. It is

further stated that plaintiff had agreed to execute a mortgage deed however, in the guise of mortgage deed, a sale deed was obtained by defendants from him. It is contended that he came to know about the said fraud being played upon him and immediately the present suit came to be filed.

4. Defendants filed written statement denying the contentions of plaintiff and it is claimed that the transaction in question is sale and not mortgage as sought to be contended by the plaintiff.

5. Learned counsel for the appellant contends that both the Courts below have committed serious error in not considering the evidence on record which shows that plaintiff was in need of money and hence he approached the defendants for financial assistance and by way of security a document was executed. According to him, the Trial Court has committed error in holding that evidence of plaintiff and his son is not relevant and ignored the evidence of Fulchand Waghmare who has deposed about the ancestral money lending business of defendants. He also argued that the First Appellate

Court has committed error in holding that the suit filed by plaintiff is barred by limitation.

6. Since the plaintiff has come out with a case that defendant No. 1 by playing fraud on him has obtained the sale deed they infact it was purported to be a mortgage deed. It is also claimed by the plaintiff that defendant No. 1 is money lender and the transaction in question is nominal in nature. The burden, therefore, is on plaintiff to prove this fact by leading cogent evidence. Evidence of plaintiff and his son cannot be considered they being the interested witnesses. With regard to evidence of Fulchand, he stated that defendant No. 1 is a money lender and sale deeds are obtained in the money lending transaction and after repayment of the amount, the sale deeds are reversed. Meaning thereby, there was evidence available to prove such transactions however, plaintiff has failed to show any such single transaction having been done by defendant No. 1. In the cross examination of this witness, it has come on record that he has no personal knowledge about the money lending business of defendant No. 1. Similarly, he gives candid admission to the effect that statement about money lending transaction between plaintiff and defendant No. 1 is being made by him at the instance of

plaintiff. Thus, testimony of this witness is of no use to prove the contention of plaintiff that defendant No. 1 is a money lender.

7. Both the Courts below have rightly held that there is registered sale deed with recital of handing over of possession of suit land to defendant No. 1. In case of nominal sale deed, there is no question of handing over of possession of land to the money lender. Plaintiff though has claimed that he is an illiterate person, as admitted by him, he was in police service and got retired as Assistant Sub-Inspector. Thus, it does not stand to any reason to accept his case that a fraud was played upon him and sale deed was obtained from him under guise of mortgage deed.

8. Considering pleadings and material evidence on record, this Court finds no substantial question of law involved in this appeal. Resultantly, appeal stands dismissed.

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

(R. M. JOSHI)
Judge