IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9828 OF 2022

1. **Rajabhau Raosaheb Gund,**
   Age 48 years, adult Occupation: Agri/Advocate

2. **Sharad Raosaheb Gund,**
   Age 42 years, adult Occupation: Agri

3. **Mahendra Raosaheb Gund,**
   Age 49 years, adult, Occupation: Agriculture
   All r/o at Post Ashti Tal Mohol
   Dist Solapur

...Petitioners

~ versus ~

1. **Ramchandra Tukaram Mane,**
   Age 50 years, adult, Occupation: Service, R/o at Post Ashti Tal: Mohol Dist Solapur at present r/o Indapur Police Line, Room No.5, Indapur Taluka Indapur District Pune

2. **Jagdish Dnynoba Gund,**
   Age 41 years, Occupation: Agriculture

3. **Ashabai Shivaji Vyvahare,**
   Age 49 years adult Occupation: Agriculture

4. **Kailash Ramchandra Mane,**
Age 47 years, adult, Occupation: Agriculture
Nos 2 to 4 R/o at Post Ashti Taluka: Mohol, District: Solapur

5. **District Deputy Registrar Co-operative Society,**
Solapur At-Central Administrative Building E-Block, Collector Office Compound Solapur

6. **Division Joint Registrar,**
Co operative Society, Pune Office-At Sakhar Sankul, Shivajinagar Pune

7. **The Registrar General Money Lending/**
Special Registrar Co operative Society, State of Maharashtra, Pune

8. **The State of Maharashtra,**
Through its Secretary in Co-operative Department of State of Maharashtra

…Respondents

APPEARANCES

For the Petitioner	**Mr Ajay A Joshi**.
For Respondent no.1	**Mr Siddharth Subhash Depande**.
For Respondents-STATE	**Mr PP Pujari AGP**.

CORAM : Dr Neela Gokhale, J.

RESERVED ON : 3rd May 2023

PRONOUNCED ON : 6th June 2023

JUDGMENT (*Per Neela Gokhale, J*):-

1. Rule. The contesting Respondents have filed Affidavits in Reply. By consent, rule made returnable forthwith.

2. The Petition arises from the Order dated 15th June 2022, passed by the Registrar General Money Lending/Special Registrar Co-operative Society, State of Maharashtra, rejecting the Revision Application of the Petitioners. The Revision Application sought to set aside the Order dated 24th August 2021, passed by the Divisional Joint Registrar of Co-operative Society, Pune, which in turn dismissed an appeal preferred by the Petitioners against an Order dated 7th June 2021, passed by the District Deputy Registrar of Co-operative Society, Solapur. By his order, the learned District Deputy Registrar was pleased to allow an application of the Respondent No. 1 under Section 18(2) of the Maharashtra Money Lending (Regulation) Act, 2014 ('**the Act**') by declaring Sale Deed dated 3rd May 2016 executed by and between the Respondents No. 2 and 5 void and consequently cancelling the same.

3. The Petitioners are owners of the suit property, having purchased the land from Respondent No. 4 by registered Sale Deed. They claim to be in possession of the land. The Respondent No. 1 is the father of Respondent No.4. Respondent No.2 is the Vendor of property sold to the Petitioners and Respondent No.3 is said to be a transferee of certain lands at some point of time. The Respondents No. 5 to 7 are authorities of the Respondent No. 8 State under the Act.

4. The Petitioners seek to set aside Orders dated 15th June 2022 passed by the Respondent No. 7 Registrar General ("**RG**"), 24th August 2021 of the Respondent No. 6 Divisional Joint Registrar ("**DJR**") and 7th June 2021, passed by the Respondent No.5 District Deputy Registrar ("**DDR**").

5. In order to appreciate the issues involved in the matter, it is necessary to set out the background of the case. The suit property comprises of agricultural land at Block No. 588/3B, situate at Village Asti, Taluka Mohol, District Solapur. The land was originally purchased by Respondent No. 1 in the name of his minor son, Respondent No.4. Upon attaining majority, Respondent No. 4 mutated his name on the Revenue Records of the land by deleting his father's name. The father claims that the name was deleted without notice to him and hence, disputed the title of Respondent No. 4.

6. It further transpires that parts of the subject land changed hands by registered Sale Deeds by and between various parties. Initially, Respondent No. 4 conveyed an area of 40 R out of the subject land Block to the Respondent No. 2 by registered Sale Deed dated 13th April 2016, who finally conveyed it to the Petitioners also by registered Sale Deed dated 8th February 2018. The physical possession of the land was handed over to the Petitioners and their names have been recorded in the Revenue Records at ME No. 7530 as owner and possessor thereof. All the registered Sale Deeds are on record.

7. Respondent No.1 challenged the title of Respondent No. 4 to the subject land and filed an application under Section 17 and 18 of the Act. The gist of the application was that prior to deleting his name as guardian, Respondent No. 1 was not given notice of the mutation, Respondent No. 4 was not competent to alienate the subject land, all the intervening Sale Deeds were executed as securities for various amount of loans and transactions were of mortgage and not sale and finally none of the purchasers held a money lending license and hence, the Sale Deeds were invalid.

8. The DDR forwarded the application to the Joint Registrar to conduct an inquiry of which inquiry report was handed over to the DDR leading him to form an opinion that the sale transactions were in fact money lending transactions and were therefore, set aside.

9. Simultaneously, Respondent No. 1 also instituted a Civil Suit No. 103 of 2018 before the learned Civil Judge Senior Division, Solapur seeking a declaration that Sale Deeds dated 13th April 2016 and 8th February 2018 are illegal and further declaration of ownership. The suit is pending.

10. The Petitioners assailed the decision of the DDR before the DJR in an Appeal No. 3 of 2021, which was dismissed and finally a Revision Application No. 45 of 2021 before the RG which was also dismissed by Order dated 15th June 2022. This is the Order which is assailed in the present Writ Petition.

11. Mr. Ajay Joshi, learned counsel appears for the Petitioners and Mr. Sidhharth Deshpande, learned counsel appears for the contesting Respondent No.1. Mr. Pujari, learned AGP appears for the State. Brief synopsis of the arguments were filed by both the parties.

12. Mr. Joshi contended that the Authorities under the Act exceeded their jurisdiction by entertaining the Application of Respondent No.1, for the reason that Section 16 of the Act conferred power on the Authority to verify whether money lender OR any person in respect of whom the authority has reason to believe that he is carrying on business of money lending. Hence, verification can be done *qua* 'money lender' OR any person. He distinguishes Section 16 from Section 18 which confers power to entertain such application by a debtor or otherwise. According to Mr. Joshi, the words *'any person'* have been consciously omitted from Section 18, thereby, limiting the power under Section 18 to be limited to only money lenders. Admittedly, the Petitioners are not money lenders.

13. He further submits that the Applicant i.e. the Respondent No.1 has no locus to initiate proceedings under the Act, since he neither claims himself to be a debtor nor a lender. Respondent No.1 not being a debtor *qua* any of the private Respondents, was a stranger to the transaction. Mr. Joshi draws my attention to the recitals of the impugned Sale Deeds. Absence of any mention of security for loan amount completely negates the relationship of money lender and debtor between either the Petitioners and Respondent No. 2 or Respondent No.4 and Respondent No.2. Intervening transactions between other Respondents *inter se* do not prove the impugned transactions to be anything other than sale, thereby, excluding mortgage. At best Respondent No.2 can only be stated to be in the business of buying and selling land. Lastly, Mr. Joshi emphasizes that the entire deposition only points towards the fact that the Petitioners are in actual possession and the transaction between the Petitioners and Respondent No.2 is of sale. Mr. Joshi also relies upon the object of the Act and stresses that the same is wholly inapplicable to the present transaction.

14. Per contra, Mr. Deshpande, learned counsel for Respondent No. 1 contradicted the Petitioners' stand regarding locus, contending that Section 18(1) provided for an application from a 'debtor' or 'otherwise', thereby, clothing Respondent No.1 with legal sanctity to make the application. He further relies upon the precedent in the matter of *Gopal Trimbak Bhate vs. Kesheosa Vishnoosa Lad*[1] laid down by the Nagpur Bench of this Court to canvas that property purchased by a father with his own money in the name of his son, leads to the presumption that the father intended to make the purchase for his own benefit and not for the benefit of the son. He further argued that considering the detailed inquiries made by Respondent No. 5 after giving sufficient opportunities to all the parties of being heard and upon considering 9 individual transactions done by Respondents No. 2 and 3, the reasoned Order dated 7th June 2021 needs no intervention. Mr. Deshpande emphasized that since the Sale Deeds executed by Respondent No.4 in favour of Respondent No.2 are cancelled, the Petitioners were added in the proceedings as 'persons concerned' as contemplated under Section 18(3). Once the title of Respondent No.2 is found defective, no title can flow from him to subsequent purchasers i.e. the Petitioners. He thus, sought dismissal of the Writ Petition.

15. Heard the parties and perused the written submissions.

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1 1936 SCC OnLine MP 221.

16. The entire dispute involves declaration of title to the suit property and determination as to whether the transactions involve parties in their capacity as 'money lender' and 'debtor'. The moot question, therefore, is whether the Petitioners were money lenders and the land which is the subject matter of the transaction between the Petitioners and the Respondent No.2 was a security for any loan or advance flowing from the Petitioners to Respondent No.2.

17. The scheme of the Act shows the legislative intent to secure the interests of poor farmers being exploited at the hands of unscrupulous creditors/money lenders. Section 2(24) of the Act defines suit to which the Act applies to be any Suit between a money lender and a debtor or his successor arising out of a loan advanced before or after the commencement of the Act. Section 18 reads as thus:

> "18.(1) If, on the basis of facts disclosed, during verification under section 16 or inspection under section 17, or by an application from a debtor or otherwise, the District Registrar has reason to believe that any immovable property, which has come in possession of the money-lender by way of sale, mortgage, lease, exchange or otherwise, within a period of fifteen years from the date of verification or the inspection or the date of receipt of application from debtor, in the nature of the property offered by the debtor to the money-lender as a security for loan advanced by the money-lender in course of money-lending, the District Registrar may, himself or through an

inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the transaction.

(2) If upon holding the inquiry as per sub-section (1), the District Registrar is satisfied that the immovable property came in possession of the money-lender as a security for loan advanced by the money-lender during the course of money-lending, the District Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid and may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be.

(3) Before passing an order or giving decision as per sub-section (2), the District Registrar shall give an opportunity to the person concerned to state his objections, if any, within fifteen days from the date of receipt of notice by him and may also give personal hearing, if he so desires.

(4) Any person aggrieved by the order or decision of the District Registrar under sub-section (2) may, within one month from the date of order or decision, appeal to the Divisional Registrar:

Provided that, the Divisional Registrar may admit the appeal after expiry of the period of one month, if the appellant satisfies him that he had sufficient cause for not preferring the appeal within the period.

(5) The order passed by the Divisional Registrar in appeal preferred under sub-section (4) shall be final.

> (6) Subject to the appeal provided under sub-section (4), the order passed or decisions given by the District Registrar under sub-section (2), shall be sufficient conveyance and it shall be the duty of every officer entrusted with the work relating to maintenance of land records under the Maharashtra Land Revenue Code, 1966, or under any other law for the time being in force, to give effect to such order in his records."

18. From the bare reading of Section 18, it is clear that the provision can apply only if the DDR forms an opinion that any immovable property has come into possession of a money lender, and the property is offered by a debtor to the money lender as security for loan advanced by the money lender in the course of money lending business. Admittedly, there is neither an averment nor any finding in the detailed Order of the DDR to indicate even remotely, any transaction between the Petitioners and Respondent No.2 to be in the course of money lending. The recitals in the registered Sale Deed dated 8th February 2018 do not refer to any security for a purported loan against the sale of land. In the absence of any finding by the DDR of any such relationship of money lender and debtor between the parties to the Sale Deed, it is difficult to presume the existence as such between the parties.

19. The Respondent No.1 has vehemently pointed to a long chain of transactions between various parties including his own family members to suggest that exchange of lands of the New Gat No. 588/3/B is an indication of a sale by mortgage to secure various loans advanced and is no ordinary sale. The DDR report also seems to corroborate the same and the opinion formed by the DDR, upon consideration of depositions of various parties also affirms the contention of Respondent No.1. The reasoning given by the DDR is; *Firstly,* Respondent No.4 had deleted the mutation entry showing his father as guardian and inserted his own name as sole owner of the suit property without giving any notice to the Respondent No.1 ; *Secondly,* and consequently, Respondent No.4 had no title to convey the land to Respondent No.2; *Thirdly,* some intervening transactions between the relatives of Respondents No. 1 and 2 suggest exchange of lands for money; *Fourthly,* neither the Petitioners nor Respondent No.2 issued a public notice informing the general public of their intended transaction and; *Fifthly,* the testimony of certain witnesses cannot be relied upon the said witnesses were also witnesses to the transaction between the Respondents No. 2 and 4. Hence, the learned DDR was pleased to declare the Sale Deed dated 3rd May 2016 as void. It is only as a consequence of the said declaration in respect of Sale Deed dated 3rd May 2016 that the subsequent sale between Respondent No.2 and the Petitioners is also presumed to be void.

20. The reasons of the learned DDR are misplaced and misconceived. The absence of a public notice cannot indicate existence of any money lending transaction between Respondent No.2 and the Petitioners. Similarly, testimony of witnesses cannot be disbelieved and discarded only because they have also attested the sale transaction between the parties. The finding of the DDR regarding lack of title of Respondent No.4 to initially convey the property to Respondent No.2, may have some reckoning, however, lack of title to convey the suit property to subsequent purchasers cannot lead to an inference of a money lending transaction. It is a matter of record that the Respondent No.1 has simultaneously instituted a suit before the Court of competent jurisdiction, i.e. the Civil Judge Senior Division, Solapur and the suit is pending. The learned Civil Court is a court of competent jurisdiction to determine and adjudicate the title of parties to the suit property, especially when there is no indication of money lending transaction between the Petitioners and Respondent No.2.

21. The learned DJR and the RG have simply agreed with the findings of the DDR and accordingly dismissed the Appeal and Revision Application respectively, of the Petitioners.

22. In the absence of existence of money lending transactions which is condition precedent to invoke Section 18, the mere adjudication of title cannot be determined by the Authorities under the Act. It is only the Civil Court which is vested with the jurisdiction to adjudicate title disputes under the provision of Specific Relief Act, 1963 and Transfer of Property Act, 1882. The contention of Respondent No.1 reinforcing his locus to move an application under Section 18 of the Act is thus, immaterial.

23. In view of the foregoing, I have no hesitation in holding that the issue relating to title to the suit property without any nexus to any money lending business or the suit property being subject matter of 'security for loan' is within the exclusive jurisdiction of the Civil Court and the Authorities under the Act have exceeded their jurisdiction in dealing with the subject matter in dispute. In any case the Civil Judge Senior Division, Solapur is already seized with Regular Civil Suit No. 103 of 2018 seeking declaration of title of the suit property.

24. Thus, the impugned Order dated 15th June 2022 passed by the Registrar General Money Lending/ Special Registrar Co-operative Society, Order dated 24th August 2021 passed by the Divisional Joint Registrar and Order dated 7th June 2021 passed by the District Deputy Registrar are quashed and set aside. The Regular Civil Suit No. 103 of 2018 be proceeded without being affected by any observations in this Order and on its own merits.

25. Rule is made absolute in terms of Prayer clause (a). There will be no Orders as to cost.

(Dr Neela Gokhale, J)

RAJU DATTATRAYA GAIKWAD
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