

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.174 OF 2018
WITH
CIVIL APPLICATION NO.435 OF 2018
IN
SECOND APPEAL NO.174 OF 2018

Tanaji Abaji Nalwade

...Appellant

Versus

Jagdev Annappa Hadre died
during appeal, through L.Rs.
1A) Basavraj Jagdev Hare and
Ors.

...Respondents

....

Mr. G.N. Salunke with MR. Sharad Suryawanshi, Mr. Ranjit Hatkar i/
b. M/s. Pol Legal Juris for the Appellant.
Mr. Swaroop Karade with Mr. Surel Shah for Respondent Nos.1a to
1c.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 26th OCTOBER, 2023.

P.C.:-

SECOND APPEAL NO.174 OF 2018:-

1. This is an appeal under Section 100 of the Civil Procedure Code filed against the judgment and order dated 25/01/2018 whereby the First Appellate Court allowed the appeal and set aside the judgment and decree passed by the Trial Court in Regular Civil Suit No.1190 of 2012 (Special Civil Suit No.123 of

2008).

2. The Appeal is admitted on the following substantial questions of law:-

- (i) Whether relying upon the oral evidence the Appellate Court could have construed the registered sale deed dated 06/02/2004 as a mortgage deed?
- (ii) Whether findings that the suit is within limitation are perverse and contrary to the evidence as well as settled principles of law?.

3. Call for the record and proceedings. Mr. Swaroop Karade, learned counsel waives service on behalf of the Respondents.

CIVIL APPLICATION NO.435 OF 2018:-

4. The Appellant, who is original Defendant has challenged the impugned judgment dated 25/01/2018 whereby the First Appellate Court allowed the appeal and set aside the judgment and decree passed by the Trial Court in Regular Civil Suit No.1190 of 2012 (Special Civil Suit No.123 of 2008).

5. The Respondent, who is the Plaintiff had filed a suit for a declaration that document dated 06/02/2004 is not a sale deed and that it is in fact a mortgage deed.

6. The Trial Court upon considering the evidence of record held that by the said registered deed dated 06/02/2004 the Respondent-Plaintiff had sold to the Appellant land admeasuring 36.1 sq.meter out of area of 76.1 sq.meter from survey No.1787 of village -North Kasba, Solapur.

7. The Appellate Court has set aside the judgment and decree and has observed that the said registered sale deed was in fact a mortgage deed and that parties had no intention to enter into a sale deed.

8. The appeal is already admitted. Considering this aspect, execution of the impugned judgment and order is stayed pending hearing of the appeal. The Appellant shall not transfer, alienate or create any third party rights in respect of the suit property pending hearing of the appeal.

9. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)