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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.268 OF 2015  
WITH  
CIVIL APPLICATION NO.937 OF 2013  
IN  
SECOND APPEAL NO.268 OF 2015**

Shri Vishwanath Vithoba Mane ...Appellant

Versus

Shri Govind Shripati Salunkhe

Since deceased Thr. LRs.

1A. Shri Shahaji Govind Salunkhe and Ors. ...Respondents

- Mr. Rudresh Jagdale, for the Appellant/Applicant.
- Mr. Vivekanand Akshali i/b. Devmani Shukla for the Respondent No.1A.
- Mr. Vaibhav R. Gaikwad for Respondent Nos.1 B/2, B/3, 3 & 4.
- Mr. R.V. Bansode for Respondent Nos.2, 5A to 5D.
- Mr. Graham Francis i/b. V.S. Talkute for Respondent No.7A and 8.

**CORAM : MADHAV J. JAMDAR, J.**

**DATE : 27<sup>th</sup> MARCH 2023**

**PC. :**

1. Heard Mr. Rudresh Jagdale, learned counsel appearing for the Appellant, Mr. Vivekanand Akshali, Mr. Vaibhav Gaikwad, Mr. Bansode and Mr. Francis, learned counsel appearing for respective Respondents.

Pallavi

2. It is the submission of Mr. Jagdale, learned counsel appearing for the Appellant that following substantial question of law is involved in the present Second Appeal :-

“Whether the finding of the learned Trial Court as well as the learned First Appellate Court that the Defendant No.1 agreed by document dated 7<sup>th</sup> May 1987 (Exh.139) to re-convey the suit property is in accordance with the evidence on record?”

3. Mr. Jagdale submitted that plaintiff has not entered into the witness box and plaintiff has filed the suit through Power of Attorney i.e. his son and therefore, adverse inference is required to be drawn against the plaintiff. He submitted that plaintiff has failed to prove execution and the contents of the said document. He submitted that evidence on record clearly shows that the said document cannot be treated as document of re-conveyance.

4. Perusal of the record shows that the plaint was filed by original plaintiff – Govind Shripati Salunkhe through his constituted attorney i.e. his son Shahaji Govind Salunkhe. It is significant to note that the suit was filed on 10<sup>th</sup> April 1990 and at that time, age of Govind Shripati Salunkhe was mentioned in plaint as 76 years. In fact, the said document of re-conveyance dated 7<sup>th</sup> May 1987 mentions that

Pallavi

age of Govind Shripati Salunkhe was 81 years. In any case, it is clear that the said plaintiff is senior citizen and his age was more than 75 years when the suit was filed. Therefore, the aspect that the suit has been filed through the constituted attorney does not affect the merits of the case.

5. As far as the contention that the plaintiff has not entered into the witness box, perusal of oral testimony of said Shahaji Govind Salunkhe i.e. son of original plaintiff - Govind Shripati Salunkhe shows that the original plaintiff had passed away before the evidence was recorded. Therefore, there is no substance in the said contention also.

6. Perusal of evidence of Shahaji Govind Salunkhe i.e. son of original plaintiff, shows that he was present when said Exh.139 was executed and the same is signed by Defendant No.1 and Defendant No.1 agreed to re-convey the property.

7. As far as the evidence of Defendant No.1 is concerned, it is admitted position that although Defendant No.1 was available and executed the said Exh.139, however, he was not examined. Thus, in fact, adverse inference is required to be drawn against the Defendant No.1.

Pallavi

8. It is admitted position that on behalf of Defendant No.1 one Mr. Dnyandeo Vithal Chavan was examined as constituted attorney. He does not appear to be from the family of Defendant No.1. However, what is relevant is, in his cross-examination, he has admitted that at Exh.139 document the person whose signature is appearing as purchaser is the signature of the Defendant No.1 and that he was not present when the said document was executed and therefore, he is not at all aware of the said document. He has further specifically stated that said Vishwanath Mane would not be leading any evidence and he would not come before the Court for leading evidence. Therefore, it is very clear that signature of the said Vishwanath on the document has been admitted. It has been specifically stated that Vishwanath would not lead any evidence. Therefore, adverse inference needs to be drawn against the Defendant No.1.

9. Both the Trial Court as well as the Appellate Court have recorded concurrent finding that it was proved that Defendant No.1 agreed by document dated 7<sup>th</sup> May 1987 (Exh.139) to re-convey the property.

Pallavi

10. Therefore, there is no substance in the Second Appeal. Second Appeal is dismissed, however, with no order as to costs. In view of dismissal of the Second Appeal, nothing survives in the Civil Application and the same is also dismissed.

**[MADHAV J. JAMDAR, J.]**