

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.29 OF 2023
WITH
INTERIM APPLICATION NO.259 OF 2023**

Vinayak Chandrakant Marne ...Appellants
& Anr.

Vs.

Alka Vasant Jadhav & Ors. ...Respondents

Mr. S.S. Patwardhan i/by Ms. Mrinal A. Shelar for
Appellants/Applicants.

Dr. Uday P. Warunjikar a/w Jenish Jain i/by Mr.
Sumit Kate for Respondents.

CORAM: MADHAV J. JAMDAR, J.

DATE: 26th June 2023

P.C.:

1. Heard Mr. Patwardhan alongwith Ms. Mrinal A. Shelar, learned Counsel appearing for the Appellants and Dr. Warunjikar alongwith Ms. Jenish Jain and Mr. Sumit Kate, learned Counsel appearing for Respondents.

2. Mr. Patwardhan, learned Counsel appearing for the Appellants submitted that following substantial question of law is involved in the present Second Appeal:

"Whether the finding recorded by the learned First Appellate Court that the sale-deed dated 2nd August 2007 is void is in accordance with the evidence on record?"

Mr. Patwardhan has pointed out evidence to substantiate his contention.

3. It is submitted by learned Counsel appearing for the Respondents that both the Courts have on the basis of the evidence on record concurrently held that no consideration has been paid and therefore the finding recorded by both the Courts that the said sale-deed is illegal and void is in accordance with the evidence on record.

4. Before considering the substantial question of law raised by Mr. Patwardhan, learned Counsel appearing for the Appellants, it is necessary to consider certain factual aspects.

5. The present Appeal is filed by Defendant Nos. 1 and 2. The Plaintiffs and Defendant No.3 are the daughters of one Bhau Marne. The Defendant No. 2 is the brother of said Bhau. The suit property is the ancestral property of Bhau Marne and Defendant No.2-Chandrakant Pandharinath Marne. Said Bhau, Bhau's daughters namely the Plaintiffs and Defendant No.3 executed registered power of attorney in favour of Vinayak Chandrakant Marne i.e. nephew of said Bhau Marne. The said power of attorney is dated 9th January 2007. On the basis of said power of attorney dated 9th January 2007, Defendant No.1-Vinayak Chandrakant Marne sold the property by registered

sale-deed dated 2nd August 2007 to his father Defendant No.2- Chandrakant Pandharinath Marne. Thus, in effect, Bhau Marne and his daughters sold the suit property by registered sale-deed dated 2nd August 2007 to real brother of Bhau Marne. The consideration shown in the said registered sale-deed is Rs.6,00,000/- and it is mentioned in the sale-deed that three cheques of Rs.2,00,000/- each dated 27th August 2007, 1st September 2007 and 7th September 2007 were handed over to said Bhau Marne. It is admitted position that the said cheques were never encashed.

6. It is significant to note that it is the contention of the Plaintiffs that said consideration was never paid. Both the Courts have extensively dealt with the evidence on record regarding payment of said consideration. Defendant Nos.1 and 2 have come up with a case that the said payment of Rs.6,00,000/- is made, however, Defendant Nos.1 and 2 have filed common written statement and it is specifically stated that the payment of consideration has been entirely paid to said Bhau Marne. In the written statement, it is specifically denied that the said cheques of Rs.2,00,000/- each were never encashed. However, as both the Courts have concurrently found that thereafter in evidence-affidavit of Defendant No.1, it is stated that at the time of execution of the sale-deed dated 2nd August

2007, entire consideration has been paid in cash to said Bhau instead of cheques. However, during the cross-examination, Defendant No.1 has stated that the said consideration was paid from time to time as said Bhau Marne was requiring extensive medical treatment and also payment was made for his religious activities. Thereafter, in the further cross-examination, he has stated that the said cheques of Rs.2,00,000/- each were not given to Bhau Marne but were given in the name of daughters of Bhau Marne i.e. the Plaintiffs and Defendant No.3. He has further admitted that there is no evidence to support his contention that the cheques were issued in favour of the Plaintiffs and Defendant No.3. He further admitted that there is no evidence to show that the said cheques were taken back from said Bhau Marne and Rs.6,00,000/- was paid in cash.

7. On the basis of above referred evidence on record, both the Courts have recorded concurrent finding of fact that the Defendant No. 2, who is the purchaser of the property has failed to prove the said payment. In fact, both the Courts have observed that the Defendant No.2 has not been examined as witness and therefore adverse inference is required to be drawn against Defendant No.2. On the basis of evidence of Defendant No.1, both the Courts have concurrently found that the Defendant Nos.1 and 2 have failed to prove the payment of

consideration of Rs.6,00,000/-. On the basis of evidence on record finding is recorded that the consideration was never paid and under the pretext of payment of consideration, transfer of ownership is claimed. On the basis of aforesaid evidence, it has been concurrently held that it can never be said that the original owners of the suit lands were intending to transfer the suit land to Chandrakant Marne i.e. Defendant No.2 by executing sale-deed in question dated 2nd August 2007. It has been concurrently held that the said sale-deed is not only without consideration but is also outcome of fraud. Therefore, there is no substance in the contention raised by Mr. Patwardhan, learned Counsel appearing for the Appellants that the finding regarding validity of the said sale-deed is not in accordance with the evidence on record.

8. Accordingly, the Second Appeal is dismissed, however, with no order as to costs.

9. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

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(MADHAV J. JAMDAR, J.)