

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**SECOND APPEAL NO.343/2006**

Shiocharan s/o Shankarrao Sadafale,  
Aged 44 years, Occ. Labourer,  
r/o Pathrot, Tq. Achalpur, Dist.  
Amravati.

**.....APPELLANT**

**...V E R S U S...**

Arun s/o Sadashiorao Sadafale,  
aged 39 years, Occ. Labourer,  
r/o Pathrot, Tq. Achalpur,  
Distt. Amravati.

**...RESPONDENT**

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Mr. J. B. Kasat, Advocate for appellant.  
Mr. A. V. Bhide, Advocate for respondent.  
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**CORAM:- ANIL L. PANSARE, J.**  
**ARGUMENTS WERE HEARD ON : 31.07.2023**  
**JUDGMENT PRONOUNCED ON : 18.08.2023**

**JUDGMENT**

Heard learned counsel for the parties.

2. The appellant-original defendant has challenged the judgment and decree dated 23.11.2005 passed by Additional District Judge, Amravati in Regular Civil Appeal No.172/1998, arising out of judgment and decree dated 28.08.1997 passed by Jt. Civil Judge Junior Division, Achalpur in Regular Civil Suit No. 129/1994.

The appellant shall be hereinafter referred to as the “defendant” and respondent as the “plaintiff”.

3. The plaintiff had filed suit for recovery of possession of the house and for recovery of damages at the rate of Rs.18/- per month for the unauthorised occupation of the disputed house by the defendant. The trial court decreed the suit as regards possession and also directed the inquiry for mesne profit. While doing so, the trial court has directed recovery of Rs.900/- from the defendant towards mesne profit for unauthorised occupation of the disputed house till the date of filing of the suit. The first appellate court has dismissed the appeal.

4. The appeal has been admitted on the following substantial question of law.

*“Whether the decrees passed by both the courts below are vitiated since the respondent/plaintiff did not seek relief of declaration that the sale-deed dated 9.5.1977 executed in favour of the defendant is null and void?”*

5. The necessary facts are as under:

The plaintiff's case was that the suit property viz. house bearing no.1123, situated in ward no.4 at village Pathrot, taluka Achalpur, District Amravati was owned by his father Sadashivrao. It is his ancestral house. Sadashivrao expired on 24.05.1981. After his death, the plaintiff and his mother Lankabai inherited the suit house. They were residing in the suit house. The defendant has,

in June, 1981, unauthorisedly evicted them from the suit house and fraudulently obtained possession of the suit house. The plaintiff's mother expired on 24.06.1981.

According to the plaintiff, the defendant is his cousin and has no authority to retain the possession of the suit house.

6. The plaintiff has amended the plaint having found hurdles from the defence put forth by the defendant. By way of amendment, the plaintiff pleaded that one Anusayabai was his stepmother. Anusayabai and defendant's mother were sisters. The defendant under the influence of Anusayabai, on 09.05.1977, got the registered sale deed of suit house executed from Sadashivrao. The plaintiff alleged that his father had no authority to sell the suit house. The plaintiff pleaded that the sale deed is nominal since the consideration amount is shown as Rs.500/- whereas the market value, at the relevant time, was Rs.5,000/- The plaintiff further pleaded that sale deed is not binding on him and maintained the prayer seeking possession of the suit house without challenging the sale deed.

7. Both the courts below have taken lot of pains to hold that the sale deed was nominal. While doing so, they have lost sight of the settled proposition of law that when the defendants

raised a genuine dispute with regard to the title of plaintiff over the suit property then necessarily the plaintiff cannot maintain suit for mere injunction or possession.

8. The learned counsel for the appellant relied upon judgment in *Padhiyar Pralhadji Chenaji (Deceased) through Legal Representatives Vs. Maniben Jagmalbhai (Deceased) through Legal Representatives and Others*<sup>1</sup>. The Hon'ble Apex Court while dealing with the scope of Sections 38 & 41 and 31 & 34 of the Specific Relief Act, 1963, has considered two contingencies; (a) seeking independent substantive relief in its own right and (b) seeking consequential relief depending on other substantial relief. One of the issues dealt with by the Supreme Court was reckoning of limitation. In such cases, the Supreme Court held that in a suit for cancellation of sale deed, declaration and consequential relief of permanent injunction, once suit is held to be barred by injunction qua declaratory relief and when relief for permanent injunction was consequential relief, prayer for permanent injunction which was consequential relief can also be said to be barred by limitation. On the other hand, when relief of permanent injunction sought is itself substantive relief, then the period of limitation would commence from the date on which the possession is sought to be disturbed.

1 (2022) 12 SCC 128

9. Learned counsel for the defendant has invited my attention to paragraph 20 of the judgment, which reads thus:

*“20. At this stage, the decision of this Court in the case of Jharkhand State Housing Board Vs. Didar Singh and Anr., (2019) 17 SCC 692 is required to be referred to. In the said decision, it is observed and held by this Court that though a bare suit for injunction in the absence of declaration relief would be maintainable and in each and every case where the defendant disputes the title of the plaintiff, it is not necessary that in all those cases, the plaintiff has to seek the relief. It is further observed and held that, however, when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.”*

(Emphasis now)

Thus, the Supreme Court has referred to its another judgment wherein it is held that it is not always necessary for the plaintiff to seek declaratory relief where the defendant disputes plaintiff's title. The Court, however, further held that when the defendant raised a genuine dispute as regards title of the plaintiff, the suit simplicitor for injunction would not be maintainable.

10. In the present case, admittedly, the sale deed was executed on 09.05.1977, the suit has been filed on 29.10.1988, the issue of limitation was framed but answered in the negative on the

ground that sale deed is nominal and that the suit was within limitation considering the date of dispossession of the plaintiff. In doing so, the trial court ignored the law, as mentioned above, on this point.

11. The Supreme Court, in the case of N.V.Srinivasa Murthy and Ors. Vs. Mariyamma (Dead) by proposed LRs.<sup>1</sup>, while dealing with the challenge to the trial court's order rejecting the plaint under Order VII Rule 11 of the Civil Procedure Code, 1908, has made certain important observations on the point of accrual of the cause of action. The Supreme Court found that the plaintiff therein has cleverly drafted the suit with a view to get over the part of limitation and payment of ad valorem Court fee. The plaintiffs therein alleged that their Late father had incurred some debts and had, therefore, borrowed a sum of Rs.2,000/- from the predecessor in title of the defendants. By way of security for the loan advanced, the registered sale deed was executed on 05.05.1953 with contemporaneous oral agreement that on return of the borrowed sum with interest thereon the registered reconveyance deed shall be executed in favour of the borrower. In the plaint, it was further averred that even after execution of the registered sale deed, which according to the plaintiff, was in fact, merely a loan transaction,

1 (2005) 5 SCC 548

the father of the plaintiffs and thereafter the plaintiffs continued to be in possession of the suit lands. It was then averred that the loan was repaid and the defendants had executed a receipt on 30.07.1963 in favour of the first plaintiff acknowledging the refund of certain amount under the loan. It was then averred that the entire loan amount was repaid and receipt was obtained on 25.03.1987 from the defendants and original registered sale deed dated 05.05.1953 was returned to the first plaintiff with an oral promise by the defendants to execute the reconveyance. The plaintiff then referred to certain revenue proceedings. The plaintiff relied upon order dated 28.04.1984 passed by Assistant Commissioner, which confirmed the order passed by the revenue authorities directing mutation of the names of the defendants on the suit land.

12. The Supreme Court noted from the pleadings that the foundation of the suit was the registered sale deed executed on 05.05.1953, which according to the plaintiff was only a loan transaction executed to secure the amount borrowed by the plaintiff's predecessor. The Supreme Court in the aforesaid background held as under:

*“11. On the above averments, relief of declaring the registered sale deed dated 5.5.1953 to be a loan transaction and second relief of Specific Performance of*

*oral agreement of re-conveyance of the property by registered instrument should and ought to have been claimed in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for obtaining re-conveyance deed according to the plaintiffs own averments in paragraph 9 of the plaint, arose on 25.3.1987 when the plaintiffs claimed to have paid back the entire loan amount and obtained a promise from the defendants to reconvey the property. Reckoning the cause of action from 25.3.1987, the suit filed on 26.8.1996, was hopelessly barred by time.”*

13. In the present case as well, the plaintiff's case is of a nominal sale deed, which was executed on 09.05.1977. The suit has been filed on 29.10.1988, the issue of limitation ought to have been answered considering the above set of facts. Nonetheless, what is important in the present case is that the law laid by the Supreme Court. In such a situation, the relief of declaration of the sale deed dated 09.05.1977, to be nominal ought to have been claimed. In the present suit, the plaintiff pleaded that the sale deed is not binding and the Courts below have answered the issue in favour of the plaintiff but failed to recognize that the plaintiff has not sought substantive prayer in this regard and in absence thereof, the consequential relief of possession could not have been granted

against the erstwhile real owner of the property, the defendants herein.

14. On the point of nature of relief which ought to have been sought by the plaintiff, the law laid down by the Supreme Court in the case of Suhrid Singh alias Sardool Singh Vs. Randhir Singh and Ors<sup>1</sup>. Dated 29.03.2010, be a guiding source. The Supreme Court was dealing with the issue of court fee payable in the suit before the court. While doing so, the Supreme Court has held in paragraph 7 thus:

*“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is*

<sup>1</sup> (2010) 12 SCC 112

*null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under [Article 17\(iii\)](#) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under [Section 7\(iv\)\(c\)](#) of the Act. [Section 7\(iv\)\(c\)](#) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of [Section 7](#)."*

15. In the present case, the plaintiff was not executant of the sale deed and therefore he has rightly pleaded that the sale deed being nominal was not binding upon him. However, he failed to seek substantive relief in this regard and in absence thereof merely on the basis of the pleadings and by answering the issue in favour of the plaintiff, the sale deed executed by plaintiff's father in favour of the defendant will not be annulled. Both the courts below failed to apply the law as aforesaid and arrived at an erroneous finding which requires correction.

16. The subsequent question of law is answered accordingly resulting into following order.

- (i) The Second Appeal is allowed.
  - (ii) The judgment and decree dated 23.11.2005 passed by Additional District Judge, Amravati in Regular Civil Appeal No. 172/1998 and the judgment and decree dated 28.08.1997 passed by Jt. Civil Judge Junior Division, Achalpur in Regular Civil Suit No. 129/1994, are quashed and set aside.
  - (iii) Regular Civil Suit No. 129/1994 is dismissed.
- No order as to costs.

**(Anil L. Pansare, J.)**

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