



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

921 SECOND APPEAL NO. 901 OF 2016
WITH
CIVIL APPLICATION NO. 16621 OF 2016
IN SA/901/2016

SAU. SOJABAI MOTIRAM PATIL
VERSUS
SAU. AHSA PRADEEP JAKHETE

...
Advocate for Appellant : Mr. Narwade Vinayak P, and
Mrs. Manjushri V. Narwade
...

CORAM : KISHORE C. SANT, J.

DATE : 02nd AUGUST, 2024.

PER COURT :

1. Heard the appellants.
2. This appeal is circulated just a day before, when next date the matter is fixed by the Executing Court on 03.08.2024 for issuance of possession warrant. The appeal is of 2016. It appears that no attempt was made to get the appeal circulated. The first date appears to be of 13.12.2023. On that date a time was sought on the ground of personal difficulty and the same

was adjourned on 16.01.2024. On 16.01.2024 again the matter was adjourned at the request of the appellant by way of a last chance. It was adjourned on 13.02.2024. On that date the matter was mentioned out of turn and time was sought till 12.03.2024. On 12.03.2024, this Court was pleased to call for record and the proceedings and the matter was adjourned on 02.04.2024. However, since the record and proceedings was awaited nothing could be done on that date. However, the record and proceedings is received in the month of May, 2024. On 12.07.2024 the appeal was again circulate for today and now the appeal is on board.

3. The appeal is vehemently argued by the learned Advocate for the appellant.

4. The facts in short are that the plaintiff/respondent in this appeal executed a sale deed in favour of the appellant/original defendant. It is the case of the plaintiff that she is owner and possessor of the land plot No.13 ad-measuring 192 sq. mtrs. from Gut No. 62/3A from Khedi (Bk.) Taluka and District Jalgaon. She purchased the said land from one

Udaychand Katariya on 13.01.1986. She has never sold her land, however, she found lateron that on 01.07.1997 a revenue entry was taken in respect of the said land in the name of the defendant by showing that the same is purchased by her by way of a sale deed. The plaintiff therefore filed a suit stating that she has never executed the sale deed in favour of the defendant. The defendant is in habit to get the sale deeds executed in her favour by presenting dummy person before the Registrar of Land Records. The husband of the plaintiff therefore lodged a police complaint against the defendant and others. The learned Advocate for the appellant has given the details about the present position of the Criminal Case bearing No. 429 of 1998. The plaintiff thus, filed a suit for possession and declaration that the sale deed is bogus and not accepted by the authority.

5. It is the defence of the defendant that she has purchased the land from the plaintiff for the consideration of Rs. 22,000/-. Thereafter, she became the owner of the plot on the basis of sale deed and prayed for dismissal of the suit.

6. The trial Court i.e. 2nd joint Civil Judge, Junior

Division, Jalgaon by judgment and order dated 06.03.2008 decreed the suit bearing RCS No. 328 of 1998. Against the said judgment the defendant filed the Regular Civil Appeal bearing No. 133 of 2008 and the same came to be dismissed on 13.11.2015 by the learned Principal District Judge, Jalgaon.

7. The learned Advocate further submits that in the present case a substantial question of law arises as regards Section 34 of the Registration Act. She further argued that the stamp vendor who prepared sale deed is examined before the Court. He admitted that he had executed a stamped document of a sale deed. The finger print expert is also examined who stated that the thumb impression on the sale deed and the thumb impression of the plaintiff matches. When such evidence is on record, the Court ought to have pass the decree. She further submits that the sale deed executed before the Registrar, there is no dispute. The dispute is only about who has executed the sale deed and in view of the finger print expert's report it is sufficiently proved that the thumb impression on the sale deed is of the plaintiff.

8. She further submits that the learned appellate Court has also committed error in not appreciating the evidence in proper perspective and particularly the report of the finger print expert.

9. This Court has gone through the record and the proceedings. This Court has perused the evidence of the parties. So far as the finger print expert's report is concerned he admitted in his cross-examination that the report which is on record does not bear his signature, though the stamp vendor i.e. scribbler of the document has examined. He in his cross-examination clearly accepted that he did not verify the identity of the vendor while executing the sale deed. Thus, on this both the Courts have held that the identify of the person who executed the sale deed is not established. It is also further held that though the finger print expert's report is on record, he admitted in his cross-examination that the said report does not bear his signature and, therefore, the said report is not exhibited by both the Courts. Considering all these aspects, this Court needs to consider the present appeal.

10. The learned Advocate has relied upon the judgment reported in **2010 (2) Mh.L.J. 970 in the case of Sarjerao Maruti Sathe Vs. Pralhad Laxman Sathe and Others.** The said judgment is in respect of Bombay Tenancy and Agricultural Lands Act. In the said case the question was about the reliability of the documentary evidence under Section 61 of the Indian Evidence Act. The Court held that the certified copy of the partition deed is not a public document and therefore, it could not have been read in the evidence without examining the attesting witness. There is no dispute so far as the preposition laid down in the said judgment. The question in this case is as to whether the defendant has specifically proved her case in respect of the sale deed when the plaintiff has specifically come with a case that she has never executed the sale deed in favour of the defendant, the question that goes to the root of the matter. After the initial burden is discharged by the plaintiff to show that she has not executed the sale deed it was for the defendant to specifically prove that the document i.e. the sale deed is executed by the plaintiff herself as it is her specific case.

11. The defendant in this case has failed to prove the

said fact. It is also not clear as to what happened about the criminal case thereafter and the learned Advocate could not give the details of the said criminal case.

12. With this all, this Court finds that the question decided by both the Courts are necessarily the questions of fact. No substantial question of law is made out calling for adjudication at the hands of this Court.

13. This Court is thus not inclined to entertain the appeal and the Second Appeal stands dismissed. No order as to the costs.

14. In view of the disposal of the Second Appeal, pending Civil Applications, if any, also stand disposed off.

(KISHORE C. SANT)
JUDGE

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