



**N THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 217 OF 2019

Dilip s/o Damodar Karale & others .. Appellants

Versus

Balasaheb s/o Badshah Aher & others .. Respondents

Mr. B. V. Dhage, Advocate for appellants.

Mr. S. T. Shelke, Advocate for respondents No. 1 and 2.

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CORAM : R. M. JOSHI, J.
DATE : 15th JANUARY, 2024.

PER COURT :

1. These appeals take exception to the judgment and order dated 2nd December, 2017 passed in Regular Civil Appeals No. 4/2008 and 19/2008 whereby the impugned judgment and order passed in Regular Civil Suit No. 274/1994 and 120/1995 was confirmed.

2. Parties are referred to as 'Dilip and another' and 'Badshah and another' for the sake of convenience.

3. Facts which led to filing of present appeals can be narrated in short as under :-

Dilip and another filed Regular Civil Suit No. 274/1994 against Badshah i.e. father of Balasaheb seeking perpetual injunction in respect of land Survey No. 67/3/1 admeasuring 1 H 83 R and Survey no. 67/2/2 admeasuring 1 H 82 R (suit lands) on the basis of registered sale-deed executed in their favour on 7th December, 1990. It is the contention of Dilip that the suit lands belong to them and are in their possession pursuant to the registered sale-deed dated 7th December, 1990. They also claim to have filed proceeding bearing Regular Civil Suit no. 24/1994 on 19th March, 2019 seeking injunction against Badshah wherein Badshah has never raised challenge to the sale-deeds. According to them, the said suit was dismissed for want of prosecution. It is alleged by them that Badshah was trying to alienate the suit lands to Madhukar as well as he attempted to take possession thereof and hence the suit for perpetual injunction seeking restraintment order against him and his wife came to be filed.

4. Badshah appeared and resisted the said suit by filing written statement claiming that the suit properties belong to him and that Dilip and another persuaded him to enter into a nominal transaction of sale in order to help him in the litigation fought by him against his uncle. It is his claim that the suit lands were never sold and that no consideration is received by him. He also claims to have retained possession thereof. It is his further case that in the suit filed by Dilip and another, ad-interim relief was granted but the same was vacated after Badshah had shown his possession over the suit lands. It is his further contention that in the year 1995, Dilip and another, by taking advantage of his absence in the suit lands, forcibly entered into therein and also raised some construction thereon. Badshah filed suit bearing Regular Civil Suit no. 120/1995 seeking mandatory injunction against Dilip and another for removing them from suit lands as well as removal of unauthorised construction carried thereon. During pendency of suit Badshah died and his legal representatives Balasaheb was brought on record.

5. Both suits were tried and decided by common judgment dated 24th October, 2001 passed by Trial Court. Suit filed by Dilip bearing Regular Civil Suit No. 274/1994 was dismissed whereas suit filed by Badshah came to be allowed granting injunction against Dilip and another restraining them

from obstructing possession of plaintiff therein over the suit lands and for removal of construction raised therein.

6. Dilip and another being aggrieved by impugned judgment passed in both the suits preferred Regular Civil Appeals No. 4/2008 and 19/2008. Both the appeals were decided by common judgment and decree dated 2nd December, 2017 by First Appellate Court confirming the judgment and decree passed by the Trial Court. Hence, these appeals.

7. Learned counsel for Dilip and another submits that there is no dispute made by Badshah or his legal representatives in respect of execution of registered sale-deed dated 7th December, 1990 in respect of the suit lands and hence in view of provisions of Section 92 of Evidence Act, the party to the said document is precluded from leading evidence contrary to the recitals of the sale-deed. It is also contended that it being a registered sale-deed, carries presumption of genuineness. It is submitted that recitals of the sale-deed clearly indicate about payment of consideration. With regard to the issue sought to be raised by Badshah claiming sale-deed being void relying upon Section 43 of Bombay Tenancy and Agricultural Lands Act, it is contended that the said objection is irrelevant as pursuant to the agreement of sale, Dilip and another came into possession of the suit lands. He also submitted that

the sale-deeds in question are never challenged and as such it was not open for the Trial Court to record any finding in respect thereof. Thus, according to him, substantial question of law is involved in the present appeals and they require admission.

8. Learned counsel for legal representatives of Badshah opposed the said contention by submitting that it is always open for the party to prove that he has not received any consideration against any transaction. It is submitted that unless consideration is passed on, the sale is not complete and mere execution of the document will not create or transfer any right, title or interest in the suit lands in favour of Dilip and another. By referring to earlier proceeding bearing Regular Civil Suit No. 24/1994, it is submitted that initially injunction granted against Badshah was vacated after he was able to prove his possession over the suit lands. According to him, the document which is void ab initio need not be challenged separately and it is open for the party to raise challenge to the same even in collateral proceeding. To support his submission, he placed reliance on judgment of Hon'ble Apex Court in case of Kewal Krishan vs. Rajesh Kumar, **AIR 2022 Supreme Court 564**. It is his further contention that concurrent findings recorded by the Trial Court and First Appellate Court do not deserve interference as the same cannot be

termed as perverse having regard to the facts of the case and evidence brought on record.

9. It is trite that unless substantial question of law is involved, an appeal under Section 100 of Code of Civil Procedure can not be entertained. What is substantial question of law is well settled by now to say that a point of law which admits of no two opinions may be a proposition of law but cannot be substantial question of law. To be “substantial”, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned.

10. In the backdrop of above legal position, factual matrix of the case is considered. There is no dispute made by both sides regarding the recording of correct facts and evidence by both Courts in the judgments. Though, it is different matter that Dilip and another challenge the conclusions drawn by both Courts. It is the case of Dilip and another that on the basis of registered sale-deeds dated 7th December, 1990, they acquired title in the suit lands and possession thereof. There is no dispute about the fact that provisions of Bombay Tenancy and Agricultural Lands Act have application to

the present case as Badshah was declared as Protected Tenant and proceedings under this act had taken place. Further, there cannot be any dispute is made about the fact that for the purpose of sale of the suit land, consent of appropriate authority i.e. Collector is essential under Section 43 of the Act. Before the First Appellate Court, it is sought to be argued on behalf of Dilip that possession of the suit lands came by virtue of agreement to sale and not by operation of law, but the same is not acceptable in view of fact that it is their specific case that they acquired title and possession on the basis of the registered sale-deed in question. There is evidence on record in order to indicate that Badshah was protected tenant in respect of the suit lands and the proceedings under Section 32G were conducted before Agricultural Lands Tribunal vide Tenancy Case No. 30/1959 and the Tribunal by order dated 30th September, 1963 declared Badshah and one Vasant as tenants of the lands. It was further declared that the suit lands have been sold by original owner to Badshah and others for consideration of Rs. 1,500/-. This clearly shows that Badshah acquired the suit lands by virtue of proceedings under Section 32G of the Act.

11. It is also pertinent to note that the mutation entries taken on the basis of the sale deeds are cancelled by the Competent Revenue Authority. The said cancellation proceeded on the ground that sale transaction is

effected without prior permission of Collector under Section 53 of Maharashtra Tenancy and Agricultural Lands Act.

12. It is sought to be contended on behalf of Dilip that in view of execution of registered sale deeds, there is bar created by Sections 91 and 92 of Evidence Act to lead evidence contrary to recitals thereof. First proviso to Section 92 however permits proving of a fact which would invalidate any document, such as fraud, want or failure of consideration etc. Since Badshah and another have specifically come out with case of raising challenge to validity of document on the ground that it was nominal and without consideration, it is open to prove the same by leading evidence.

13. Balasaheb, son of Badshah, entered into witness box and claimed non receipt of consideration at the time of execution of sale deed. There would be inherent limitation for him to prove negative i.e. not receiving consideration. In such circumstances other circumstances would be relevant to take into consideration. It is claimed that he was fighting litigation with his uncle and Dilip and another asked him to execute sale deeds to avoid his litigation. According to other side, the consideration amount is fixed at Rs. 50,000/- but since Sub-Registrar refused to register sale deeds, on ground that market value of suit properties is higher, the

consideration was enhanced. On the day of registration of documents, Dilip and another executed hand loan receipts (Exhibit 189/190) in favour of Badshah, for Rs. 21,000/- and Rs. 29,000/- respectively. Though Dilip claimed execution of hand loan receipt, there is no explanation as to why those receipts were executed. On the other hand, Rajendra (DW1) during cross examination admitted that Rs. 50,000/- was paid to Badshah on his daughter's marriage prior to one and half year of execution of sale deeds. He is unable to state amount of total consideration paid to Badshah. Though he claimed that from time to time Rs. 1,75,000/- is paid to vendor but there is no corroboration to this statement of witness with any other evidence. There is absolutely no evidence on record to hold that on date of execution of sale deed any consideration was paid to Badshah. The contentions sought to be raised in oral evidence of Dilip and another for first time is to claim that Rs. 1,75,000/- was paid for medical expenses, however, the said evidence being in absence of, pleadings cannot be considered.

14. Another question sought to be raised is as to whether it was open for Badshah or his legal representatives to seek challenge to the said sale deeds without seeking formal declaration in that regard. It would be relevant to refer to the judgment of Hon'ble Apex Court in case of Kewal Krishan (supra) wherein the issue about validity of sale deed for want of

payment of consideration was decided and it was held that the sale deed without payment of consideration is void. It is further held therein that the document which is void need not be challenged by claiming declaration as the said plea can be set up and proved even in collateral proceeding. Having regard to the law settled by Hon'ble Apex Court, this Court finds no substance in the contention of learned counsel for Dilip in this regard.

15. Considering the facts and circumstances of the case and having regard to entire evidence on record, this Court finds no perversity in the findings recorded by both the Courts below. Since no substantial question of law is involved in these appeals, both the appeals stand dismissed.

16. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge