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SA-165-2024

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 165 OF 2024

Hariram s/o. Kondiba Mane
Age: 52 years, Occupation- Agriculturist,
R/o. Chandgaon, Taluka: Renapur,
District- Latur.

...APPELLANT
[Orig. Plaintiff]

VERSUS

1. Fakirsaheb s/o. Shankarrao Mane,
Age: 64 years, Occupation- Agriculturist
2. Laxmi Fakirsaheb Mane
Age: 56 years, Occupation- Household & Agriculturist.
3. Venkatrao Fairsab Mane,
Age: 36 years, Occupation- Agriculturist
R/o. Chandgaon, Taluka: Renapur,
District- Latur.

...RESPONDENTS
[Orig. Defendants]

.....
Mr. D.P. Munde, Advocate for appellant
Mr. H.B. Nandgavale, Advocate for the respondent
.....

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 2nd DECEMBER, 2024

ORDER:

1. Appellant/plaintiff takes exception to the judgment and decree passed by District Judge, Latur, dated 30.03.2024 in Regular Civil Appeal No. 144 of 2015 as well as judgment and decree passed by Civil Judge, Junior Division, Renapur dated

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18.09.2015 in Regular Civil Suit No. 52 of 2012, by which the suit of the appellant/plaintiff seeking declaration of ownership and injunction has been partly decreed to the extent of grant of protection of possession till eviction by following due process of law while rejecting the prayer for declaration of ownership over the suit property.

2. The appellant/plaintiff filed suit contending that the defendant No. 1 was indebted and was in the need of money. He was owner and possessor of land Gut No. 102. With a view to satisfy need, defendant No. 1 executed sale deed dated 26.02.2004 in his favour for consideration of Rs. 2,13,000/-. It was an out and out sale transaction. Plaintiff was put into possession of land as owner. His name was mutated in record of rights. However, defendant issued a notice dated 20.02.2008 alleging transaction to be nominal one, towards security of loan and claimed for reconveyance of the property based on alleged agreement dated 26.02.2004 by accepting the amount of Rs. 1,50,000/-. The plaintiff replied said notice and denied the execution of so called agreement dated 26.02.2004 and asserted that he become absolute owner of the property. Defendant No. 1, thereafter filed complaint to police against him alleging

obstruction in ploughing operations. So also, defendant No. 1 filed Regular Civil Suit No. 21/2012 seeking specific performance of contract/reconveyance of the suit land and recovery of possession. The plaintiff's claim was refuted by defendant No. 1 to 3 contending that transaction under sale deed dated 26.02.2004 was a security towards loan of Rs. 1,50,000/- advanced by the plaintiff to defendant No. 1. On the same date of execution of sale deed plaintiff had agreed for reconveyance of the property on repayment of the loan amount within a period of four years. Therefore, the plaintiff was called upon to reconvey the land by accepting the amount. The plaintiff refused to do so, therefore, defendant No. 1 lodged the FIR. Thereafter compromise took place and on 17.04.2008, plaintiff executed a memo in presence of witnesses and agreed to reconvey the property in favour of defendant No. 1. Since, he failed to stand by his promise, defendant No. 1 has instituted Regular Civil Suit No. 21/2012 seeking reconveyance of suit property.

3. Considering the contentious pleadings, issues were framed, parties were put to record oral and documentary evidence. On closure of evidence, parties were heard. The Trial Court concluded that the plaintiff failed to prove his ownership

over the suit land. However, protected his possession of the plaintiff till eviction by following due process of law.

4. Plaintiff filed Regular Civil Appeal No. 144/2015 before the District Court, Latur, however, said appeal came to be dismissed concurring with finding recorded by the Trial Court.

5. Mr. D.P. Munde, learned advocate appearing for the appellant would submit that both the Courts have committed patent error of interpretation of document dated 26.02.2004 i.e. registered sale deed executed by defendant No. 1 in favour of the plaintiff. By inviting attention of this Court to the contents of document, he submits that it is an out and out sale. Intention of the parties to transfer the title is writ large. There is payment of consideration followed by delivery of possession. According to him, all the facets of sale deed have been complied in the facts of the case. He would further submit that although the plaintiff had specifically denied execution of agreement of reconveyance, Courts below have erroneously relied on same and erroneously concluded that the sale deed executed by defendant in favour of the plaintiff was nominal and towards security of loan. In support of his contentions, he placed reliance on the judgment of Supreme Court in the case of *Raj Kishore (Dead) By LRS. vs.*

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Prem Singh and Others¹ and Prakash (Dead) By L.R. v. G. Aradhya².

6. Per contra, Mr. Nandgavale, learned advocate appearing for the respondent supports the judgment and decree passed by Courts below. He would submit that both the Courts have recorded concurrent findings of facts based on material tendered into service. There is no infirmity or illegality in the approach of the Courts below. No substantial question of law arises for consideration in this second appeal, hence, he urges to dismiss the appeal.

7. Having considered the submissions advanced it can be observed that plaintiff claims title on the basis of sale deed dated 26.02.2004, executed by defendant No. 1, whereas defendant is coming with a case that on very same day i.e. 26.02.2004, plaintiff had executed agreement of reconveyance and agreed to transfer the property in favour of defendant after accepting amount stipulated in the sale deed.

8. It is true that the document at Exhibit-26/A executed by defendant No. 1 connotes stipulations of the sale deed

1 (2011) 1 SCC 657

2 AIRONLINE 2023 SC 643

against consideration of Rs. 2,13,000/-, so also, delivery of possession of land in favour of the plaintiff.

9. Although, the plaintiff denied the document Exhibit-25, which is in the nature of agreement of reconveyance in favour of defendants, both the Courts on appreciation of oral and documentary evidence, recorded concurrent finding of fact that the plaintiff had executed the same and agreed to reconvey the property in favour of defendant on payment of Rs. 1,50,000/-. It is to be noted here that document of reconveyance and sale deed were executed on one and the same day i.e. on 26.02.2004. Defendant has specifically stated that he was facing financial duress and received advance of Rs. 1,50,000/- from the defendant and executed sale deed showing consideration amount to be Rs. 2,13,000/- as per market value. Said transaction was towards security of loan. In turn, defendant executed agreement of reconveyance on condition of repayment of Rs. 1,50,000/-. The defendant relied upon evidence of witnesses to aforesaid transaction i.e. PW2- Rambhau Ingle and PW3- Damodar Kasbe. Both of them supported the case of defendant No. 1 that defendant No. 1 agreed to execute the sale deed towards security of the loan advanced by the plaintiff. Similarly, the

plaintiff executed the document of reconveyance on repayment of loan amount. Pertinently, there is one more document i.e. compromise memo Exhibit-32 wherein the plaintiff agreed in presence of witnesses that he will reconvey the land in favour of the defendant.

10. Although, Mr. Munde, learned advanced appearing for the appellant placed reliance on judgment in case of Raj Kishore (supra), it can be observed that in that case the suit was filed for redemption of mortgage and not for reconveyance of the property. In that view of the matter, relying upon stipulations in sale deed, Supreme Court concluded that in absence of condition embodied in the sale deed itself regarding reconveyance of the property, the document cannot be considered as mortgage by a conditional sale within the meaning of Section 58(c) of Transfer of Property Act. Consequently, refused to grant relief of redemption mortgage.

In the present case, plaintiff is claiming on the basis of independent agreement of reconveyance. He has recorded evidence to show that sale deed was nominal and towards security of the loan.

11. Similarly, in Regular Civil Suit No. 21/2012 filed by defendant No. 1 seeking specific performance/reconveyance of sale, decree has been passed directing the plaintiff to reconvey the property by accepting the amount stipulated in the reconveyance deed i.e. amount received towards the loan.

12. In view of aforesaid factual scenario and concurrent finding recorded by both the Courts, no substantial question of law arises for consideration in this second appeal. Second appeal stands dismissed.

[S. G. CHAPALGAONKAR, J.]