2024:BHC-AUG:28408

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 166 OF 2024
WITH
CIVIL APPLICATION NO. 6801 OF 2024
IN
SECOND APPEAL NO. 166 OF 2024

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

VERSUS

Fakirsaheb s/o. Shankarrao Mane,
Age: 64 years, Occupation- Agriculturist,
R/o. Chandgaon, Taluka: Renapur,
District- Latur. ...RESPONDENT
[Orig. Plaintiff]

....

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. The appellant takes exception to the judgment and decree passed by District Judge, Latur, dated 30.03.2024 in Regular Civil Appeal No. 143 of 2015 as well as judgment and decree passed by Civil Judge, Junior Division, Renapur dated 18.09.2015 in Regular Civil Suit No. 21 of 2012, by which the

suit for specific performance of contract i.e. for reconveyance of the property and possession instituted by the respondent/plaintiff has been decreed. (For the sake of convenience and brevity, hereinafter parties are referred by their original status in the suit.)

2. The plaintiff instituted Regular Civil Suit No. 21 of 2012 (Old Special Civil Suit No. 176 of 2008) seeking relief of specific performance of contract i.e. for reconveyance of the suit property and possession. The suit property is described as Gut No. 102, situated at village Chadgaon, Taluka- Renapur, particularly specified in the schedule of the plaint. According to the plaintiff, he was in the need of money. He approached the defendant with demand of Rs. 1,50,000/-. On insistence of defendant, he executed sale deed dated 26.02.2004 in favour of defendant. Towards security of the loan. The defendant had agreed that he will reconvey the suit property to plaintiff on repayment of amount of Rs. 1,50,000/- and towards interest he would enjoy the suit property till the date of reconveyance. Consequently, defendant also executed agreement of reconveyance on the same day i.e. on 26.02.2004, and agreed that on repayment of amount of loan he shall execute the sale

deed of suit property in favour of the plaintiff. The plaintiff was to repay the loan till 25.02.2008, however, defendant refused to accept the amount of loan and returned the suit land. The plaintiff issued a legal notice dated 20.02.2008 to defendant seeking reconveyance, however, defendant gave false reply dated 27.02.2008 and refused to execute sale deed in his favour. The plaintiff lodged FIR against the defendant for illegal money lending business, however, the matter was settled. The defendant executed an agreement/compromise memo dated 17.04.2008 in presence of witnesses and agreed to return the suit property to the plaintiff. However, he failed to act upon agreement. Consequently, the plaintiff filed the suit.

3. The defendant refuted the contentions of plaintiff by filing written statement. He denied execution of the agreement of reconveyance. He contended that the transaction was out and out sale, plaintiff had sold out the suit land to him for full and final consideration and delivered the possession. Indeed plaintiff was indebted and he was in financial need. Considering his request the land was purchased for the consideration, consequently possession was handed over to the defendant.

4. In view of contentious issues surfaced from the pleadings of respective parties, Trial Court framed the issues. Both the parties recorded oral evidence and tendered supporting documents. The Trial Court after evaluation of evidence and hearing the parties concluded that the transaction under sale deed was nominal. The defendant had agreed to reconvey the suit property in favour of plaintiff. The plaintiff was always ready and willing to perform his part of agreement. Consequently, directed the plaintiff to deposit Rs. 1,50,000/- and directed the defendant to execute reconveyance of the sale deed of suit property in favour of plaintiff within a period of 15 days. The decree passed by the Trial Court assailed by defendant in Regular Civil Appeal No. 143 of 2015. The District Court concurred with the findings recorded by the Trial Court and dismissed the appeal.

5. The core issue involved in the present second appeal is as to whether the Courts below are justified in holding that the sale deed dated 25.02.2004 executed by the plaintiff in favour of defendant was nominal or whether the transaction between the parties was the mortgage by way of conditional sale as contemplated under Section 58(c) of Transfer of Property Act.

6. Mr. D.P. Munde, learned advocate appearing for the appellant would submit that plain reading of contents of sale deed clearly depicts that it was an absolute sale transaction for consideration. Admittedly, the plaintiff had received the consideration amount and passed on possession in favour of the defendant. There was no condition of reconveyance in the same document. Therefore, both the Courts below have committed patent error of law while holding that the sale transaction was nominal or for the purpose of 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. Prem Singh and Others***[1] and ***Prakash (Dead) By L.R. v. G. Aradhya***[2].

7. Per contra, Mr. Nandgavale, learned advocate appearing for the respondent supports the judgment and decree passed by Courts below. He would submit that concurrent findings of facts have been recorded by the Courts below on appreciation of evidence on record and no substantial question of law arises for consideration in this second appeal.

8. Having considered the submissions advanced and after going through the reasoning adopted by the Courts below,

1 (2011) 1 SCC 657
2 AIRONLINE 2023 SC 643

it can be observed that the plaintiff had executed sale deed dated 26.02.2004 in favour of defendant in respect of the suit property. It is true that the contents of sale deed no where depict that it was transaction of mortgage. The nature of transaction as discernible from the contents of sale deed appears to be a complete sale. It is also admitted that the possession was delivered to the defendant in pursuance of the sale deed. However, on very same date i.e. 26.02.2004, the defendant has executed agreement of reconveyance on repayment of the amount of loan till 25.02.2008. Although, the defendant denied execution of said agreement. Plaintiff recorded his own evidence and examined witnesses to the transaction i.e. PW2- Rambhau Ingle and PW3- Damodar Kasbe. Both of them categorically deposed that plaintiff was in the need of money and on insistence of defendant, document in the nature of sale deed was executed. It was agreed between parties that the loan amount received by plaintiff would be repaid within the period of four years and on said repyament the property would be reconveyed in favour of the plaintiff. The independent document of reconveyance was executed by defendant on the same date.

9. The Trial Court as well as the Appellate Court found

that the evidence recorded on behalf of plaintiff was reliable. Further as regard to admissibility of such evidence and bar under Section 92 of Evidence Act, both the Courts have concurrently recorded a finding that two independent documents depict real intention of parties and leading of evidence to show intention of parties would be permissible in view of clause 6 of Section 92 of Indian Evidence Act. No fault can be found with the approach of the Courts in recording the aforesaid conclusion.

10. Although, appellant contended that in view of Section 58(c) of Transfer of Property Act transaction can be treated as mortgage by conditional sale, such contention cannot be accepted for the simple reason that there are two independent document of transactions and condition of reconveyance is not incorporated in document of sale itself.

11. One more important factor needs attention is execution of compromise at Exhibit-32 by defendant in response to the complaint made by the plaintiff to the authorities under Money Lending Act. Even the said agreement is proved by recording evidence of witnesses, which clearly depicts transaction between parties was a security to loan and not an out and out sale. In that view of the matter, no substantial

question of law arises for consideration in this second appeal. Second Appeal stands dismissed.

12. In view of disposal of second appeal, pending civil application stands disposed of.

[S. G. CHAPALGAONKAR, J.]