



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 467 OF 2015
WITH CIVIL APPLICATION NO. 10288 OF 2017
WITH CIVIL APPLICATION NO. 11227 OF 2015

SHIVRAJ BHAGWANTRAO DESHMUKH
VERSUS
VAIJANATHAPPA BHUJANGAPPA TAMSHETTE

Mr. B. A. Darak, Advocate for the appellant
Mr. U. B. Bilolikar, Advocate for respondent Nos.1A to 1D.

CORAM : R. M. JOSHI, J.
DATE : 22nd JANUARY, 2024

P.C. :-

1. This appeal takes exception to the judgment and decree dated 28/07/2015 passed in RCA No. 11/2011 whereby the judgment and decree passed by the Trial court in Spl. Civil Suit No. 7/2006 dismissing the suit was confirmed.
2. Parties are referred to as plaintiff and defendant for sake of convenience.
3. Certain facts are not in dispute in this case and hence on the basis of judgments passed by the Trial Court as well First Appellate Court this appeal can be decided by consent of both sides.

4. Facts which led to filing of appeal can be narrated in nutshell as under:

(i) The plaintiff filed suit for declaration that he is owner and possessor of suit House bearing No. 3, plot No. 4 of suit property situated at Dharmabad and cancellation of the sale deed No. 204 dated 08/02/1999 executed by the plaintiff in favour of the defendant as nominal. He also sought injunction in respect of the suit property. It is case of plaintiff that he was in need of Rs.1,25,000/- and hence he asked for the said amount from defendant, who is his maternal uncle. It was decided to execute nominal document and hence sale deed in question was executed. On 29/03/1999, defendant agreed to reconvey suit property on receiving Rs.1,25,000/- but avoided to execute document on one or another pretext. Defendant denied contention of plaintiff and claimed right title and interest in the suit property.

(ii) While framing of issues at Exhibit 30 amongst other issues, issue of bar of limitation for filing of suit also came to be framed. Both sides, without raising objection to the issues framed, went on with trial. Plaintiff examined himself at Exhibit 37. Apart from other contentions he admitted execution of sale deed dated 08/02/1999. He claimed that there was oral agreement of reconveyance. He also claimed that defendant executed document of acceptance of Rs.1,25,000/- from

plaintiff and agreed to reconvey suit property after coming back to Dharmabad. In cross-examination it is accepted that in original plaint there was no pleading of document dated 29/03/1999 and receipt of Rs.1,25,000/- by defendant for plaintiff etc. and it was added by amendment in 2007. He further admitted that sale deed dated 08/02/1999 stands in name of defendant. There is no mention of the said transaction being nominal in document itself. He also admits that in 1999 he was in dire need of money.

(iii) Plaintiff also examined Datta Raut at Exhibit 44. He deposed on the line of case of plaintiff. In cross-examination however he agreed that before or after execution of sale deed (Exhibit 91) there was no writing executed between plaintiff and defendant. He further accepted that no talk had taken place between plaintiff and defendant in his presence. Similar is evidence of Bapurao Iranna (Exhibit 45) examined by plaintiff. He admits to have made false statement in affidavit of evidence about identifying signature of Shivraj Deshmukh. Other witnesses examined by defendant are not relevant for decision of the case.

(iv) Learned Trial Court on the basis of evidence on record held that plaintiff has failed to prove that sale deed (Exhibit 91) is a nominal document and not transaction of sale. Even in respect of document dated

29/03/1999 (Exhibit 95) after going through evidence of witness including handwriting expert, has found evidence led by plaintiff in this regard to be unreliable. Apart from this it is also recorded that in Deed (Exhibit 98) there is no stipulation of term that defendant agreed to reconvey suit property to plaintiff.

5. Plaintiff has come out to the specific case that sale deed was executed on 08/02/1999 (Exhibit 91). It is his further contention that on 29/03/1999 another document was executed between the parties which indicates the repayment of the loan taken by the plaintiff from defendant. Admittedly this suit is filed on 21/04/2006. There cannot be dispute with regard to the fact that to the present case Article 58 of the Limitation Act gets attracted. The said provision reads thus:

<i>Deception of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>58. To obtain any other declaration</i>	<i>Three Years</i>	<i>When the right to sue first accrues.</i>

. It clearly shows that the time for a suit for a declaration under this article shall start run from the date when such right accrues. In the instant case plaintiff seeks declaration in respect of the registered sale deed admittedly executed by him in favour of defendant on 08/12/1999. He further claims that on 23/09/1999, another document is said to be

executed by defendant acknowledging repayment of money and agreeing to reconveyance of suit property. Thus, the right first accrued for plaintiff to file suit was on 23/09/1999. The plaintiff has sought to take plea in the present case about the cause of action for filing suit has arisen on 05/04/2006 when he approached to the defendant claiming the execution of sale deed but defendant refused the same. This though sought to be made out as cause of action for filing suit for declaration but period of limitation has started ticking against him, on alleged execution of agreement at 29/03/1999, as per case of plaintiff. Cause of action when right to sue first accrued is relevant for determination of period of limitation and not any other subsequent cause of action. Since suit is admittedly filed on 21/04/2006, is certainly barred by limitation. Findings recorded by both Courts on the issue need no interference.

6. Concurrent findings recorded by both Courts are in consonance with the material evidence on record and having due regard to the plea raised by parties. Thus, no perversity is found to cause any interference therein. For want of involvement of substantial question of law, appeal deserves to be dismissed and accordingly stand dismissed. Pending applications, if any, stand disposed of.

(R. M. JOSHI, J.)

ssp