



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

921 WRIT PETITION NO. 15134 OF 2023

Sunil Suryabhan Nagne And Others

VERSUS

Dhanraj Narayan Ujlambe

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Advocate for the Petitioner : Mr. Kulkarni Suvidh S.

Advocate for Respondent : Mr. V. C. Solshe

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CORAM : R. M. JOSHI, J.

Dated : July 23, 2024

PER COURT :-

1. Heard. By consent of both sides, heard finally at the admission stage.
2. This petition takes exception to rejection of Exhibit 5 in Special Civil Suit No.80/2018 and confirmation of the said order in Misc.Civil Appeal No.48/2019.
3. It is case of the petitioners/ plaintiffs that the suit property bearing Gut No.186 total admeasuring 2 H 50 R to the extent of 1 H 40 R is ancestral property of the plaintiffs. The property originally stood in the name of Suryabhan Nagne, who is father petitioner Nos.1 and 2 and husband of petitioner No.3. It is claimed that Suryabhan (now deceased) was suffering from medical ailments and because of which he was in the need of money and as he was in economic crises, he approached the defendant for seeking loan from him. A document came to executed styled as sale deed in favour of defendant on 17/07/2013. It is further claimed that this is not the transaction of sale but it was by way of a security for repayment of loan and it was agreed between the parties that the defendant would reconvey the property once the entire loan is repaid.

It is alleged by the plaintiff that on 25/07/2018 the defendant had entered the suit property and issued threats to the plaintiffs for repayment of money. On the basis of this cause of action, suit is filed seeking injunction against the defendant restraining him from interfering into the possession of the plaintiff over the suit property, so also declaration is sought about cancellation of registered sale deed dated 17/07/2013. The respondents/ original defendant opposed the said contention so also he opposed grant of any interim relief as sought by the plaintiffs.

4. Learned Counsel for plaintiffs submit that though the sale deed is registered document executed on 17/07/2013, however the averments in the plaint are categorical to say so that it is a hollow transaction and was executed by way of a security towards the return of hand loan. It is his submission that both Courts below have committed error in not considering panchanama dated 02/01/2019 which indicates the possession of the plaintiff over the suit property, so also affidavit of the adjoining cultivator confirming the said fact.

5. Learned Counsel for the respondent opposed the said contention by placing reliance on the registered sale deed which refers to handing over of the possession of the suit property by the vendor to the purchaser. It is his further contention that the declaration is sought in

respect of the sale deed is beyond period of limitation, and as such, both Courts have not committed any error in rejecting application Exhibit 5.

6. There is no dispute about the fact that registered sale deed is executed on 17/07/2013 by the owner of the suit property. This document is executed in 2013 and during the lifetime of vendor i.e. till 16/10/2015 no objection was raised by him with regard to the genuineness of transaction. It is after three years of his death present suit came to be filed. Prima facie perusal of the affidavit of the adjoining land owner shows that he was having knowledge of the transaction in the year 2013 itself. If it is so, it cannot be accepted that the petitioners who are the children and widow of the vendor had no knowledge about the same. Thus, on the face of it, suit is not filed within limitation.

7. Having regard to the aforestated facts and more particularly the observations made by the Trial Court which are confirmed by the Appellate Court, this Court finds no reason to cause any interference in the said concurrent findings in exercise of writ jurisdiction. Hence, petition is dismissed.

(R. M. JOSHI, J.)

vj gawade/-.