IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 717 OF 2015
WITH
CIVIL APPLICATION NO. 96 OF 2016
IN
SECOND APPEAL NO. 717 OF 2015

Shri Arjun Shankar Salunkhe … Appellant/Applicant

vs.

Jagganath Anandrao Shedge (since deceased through legal heirs) and Ors … Respondents

Mr. Rushikesh C. Barge for Appellant/Applicant.

CORAM : GAURI GODSE, J.
DATED : 3rd DECEMBER 2024

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by the original defendant to challenge the concurrent judgments and decrees granting reconveyance of the mortgage property to the plaintiffs on deposit of the mortgage amount.

2. Learned counsel for the appellant submits that the plaintiffs never intended to execute the mortgage, and the intention of the parties was absolute sale. He submits that since the suit property

was a Devasthan property transaction of sale was not possible; hence, the mortgage document was executed. Learned counsel for the appellant therefore submits that both the courts could not have accepted the document as a mortgage document, in the absence of any proof of the contents of the documents. He therefore submits that the second appeal would raise substantial questions of law on the real nature of the suit document executed between the parties.

3. I have considered the submissions made on behalf of the appellant. The appellant has not disputed the execution of the mortgage document. A perusal of the reasons recorded by both the courts indicates that the appellant accepted that the document was a mortgage document. The only ground raised on behalf of the appellant appears to be the intention of the parties to execute a sale deed.

4. When the appellant has not raised any dispute on the terms and conditions recorded in the mortgage document, the pleadings that the real intention of the parties was to execute the sale deed and not the mortgage document cannot be accepted, in the absence of any supporting evidence. In view of the admission given by the appellant both the courts have accepted the terms and conditions of the document. Even otherwise, there is no dispute on the terms and

conditions that were recorded in the mortgage document. In view of these admitted facts, the findings recorded by both the courts cannot be faulted.

5. I do not find any illegality or perversity in the reasons recorded by both the courts. The second appeal does not raise any question of law.

6. Hence, the second appeal is dismissed. In view of dismissal of the second appeal, pending civil application is disposed of as infructuous.

(GAURI GODSE, J.)