IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10916 OF 2023.

Shankar Apparao Mate and Anr. ...Petitioners.
Versus
Jagganath Jayram Shinde
Through Power of Attorney and Ors. ...Respondents.

Mr. Ajay Joshi for the petitioners.
Ms. Seema S. Dighe a/w. Mr. Shubham Sane and Mr. Rajesh Ranlani h/f. Ms. Priya Sarda for the respondent.
Ms. Sulbha Chipade, AGP for respondent-State.

Coram : Sharmila U. Deshmukh, J.
Reserved on : 25th July, 2024.
Pronounced on : 07th August, 2024.

JUDGMENT :

1. ***RULE.*** Rule made returnable forthwith and taken up for final hearing with the consent of the parties.

2. By this petition, the challenge is to the order dated 31st May 2023 passed by Respondent No 3 in Money Lending Appeal No.5 of 2021 arising out of judgment and order dated 13th September 2021 passed by the Respondent No 2 in Money Lending Suit No.23 of 2017.

3. The facts required to be exposited are that agricultural land bearing Gat No.182/3 and 187/2 situated at village Chikhali, Taluka

Mohol, District Solapur, were owned by Respondent No.1 and accordingly his name was mutated in the record of rights. *Vide* registered sale deed dated 21st March 2013 and 10th June, 2016 the respondent No.1 sold Gat No.182/3 ad-measuring about 40 Are and Gat No 187/2 admeasuring 28 Are to Petitioner No.1. Pursuant to the execution of the sale deeds, the name of Petitioner No 1 was entered in the 7/12 extract by certifying mutation entry No.1738 and 1860 respectively. By registered sale deed dated 20th March 2017, the Petitioner No.1 sold the subject land to Petitioner No.2.

4. On 14th April, 2017 an application came to be filed by the Respondent No 1 alleging money lending transaction on part of the Petitioner No 1 under the Maharashtra Money-Lending (Regulation) Act, 2014 (for short Money Lending Act). The Assistant Registrar submitted report dated 12th June, 2017 under Section 16 of Money Lending Act. The report stated that spot inspection was carried out of Gat No 182/3 and statements were recorded. The report states that the Respondent No 1 had executed sale deed dated 21st March, 2013 in favour of the Petitioner No 1 out of money lending transaction and on stamp paper of even date, the Petitioner No 1 had agreed to reconvey the property after two years, which was not done. The Respondent No 1 and the villagers claim that the subject property is in possession and cultivation of Respondent No 1. The report concluded that the Petitioner No.1 had agreed to reconvey the property by the deed executed on stamp paper of Rs 100/, which was not done and it appears that the sale transaction was out of money lending transaction.

5. Money Lending Suit No.23/2017 was filed by respondent No.1 through his daughter in law and Constituted Attorney Rupali Kisan Shinde, under Money Lending Act on 6th October, 2017. It was contended that Gat No.182/3 was mortgaged on 21st March 2013 for a period of 2 years for sum of Rs.1 lakh whereas Gat No.187/2 was mortgaged on 10th June 2016 till repayment of sum of Rs.1,60,000/- . The Petitioner No.1 is carrying out money lending business without license. In the year 2013 respondent No.1 was in financial need and had approached petitioner No.1 for financial assistance of Rs. 1 Lakh which was given on interest rate of 8% and as security for the loan transaction Gat No.182/3 was mortgaged with petitioner No.1. On the same date a Return Sale receipt was executed on stamp paper of Rs.100/- by the petitioner No.1 in the presence of witnesses i.e. Rajaram Pandurang Shirsat and Gunappa Eknath Yadav. As noted in the Return Sale Receipt the sum of Rs.1,00,000/- at the rate of 8% was advanced to respondent No.1 and within a period of 2 years the sum of Rs. 3,00,000/- had to be repaid to the petitioner No.1 upon which re-conveyance deed was to be executed. The amount of Rs.1,00,000/- along with accrued interest as on 20th March 2015 amounting to Rs.2,00,000/- was paid and the principal sum of Rs.1,00,000/- was tried to be repaid to the petitioner No.1 in the year 2015. However petitioner No.1 did not accept the same and on 10th June 2016 got executed sale deed in respect of Gat No.187/2 to which the Respondent No.1's son is a consenting party without any consideration and by luring the Respondent No.1 with false assurance of assistance in obtaining bank loan.

6. It was further contended that petitioner No.1 upon being asked to execute reconveyance deed by accepting payment of Rupees One Lakh, refused to do so and therefore the present application was filed. The subject properties were in possession of respondent No.1 and that the sale deeds executed by petitioner No.1 in favour of petitioner No.2 are nominal sale deeds. By said application the Respondent No.1 sought relief of cancellation of sale deeds and release of the subject land from mortgage.

7. The suit came to be resisted by the petitioners contending that there was no money lending transaction between the Petitioner No.1 and the Respondent No.1. On 21st March 2013 there was no Return Sale receipt executed by the petitioner No.1 and the said receipt is a forged and fabricated document which is not signed by petitioner

No.1. The stamp paper does not indicate that the transaction was money lending transaction. It was contended that the Sale Deeds dated 21st March 2013 and 10th June 2016 are legal and valid sale deeds and their names have been mutated in the revenue records. The Assistant Registrar had no authority to pass an order directing to file the suit.

8. The parties led evidence. The District Deputy Registrar vide judgment and order dated 13th September 2021 came to the following findings:

(a) The witnesses for the Respondent No 1 have deposed about the execution of the Return Sale Receipt on stamp paper of Rs.100/- by the Petitioner No.1 on 21st March, 2013. The Stamp papers has been purchased by the Petitioner No.1 and bears his signature.

(b) The Petitioner No.1 had agreed to execute the return sale deed in favour of the Respondent No.1.

(c) As the return sale deed was agreed to be executed by the Petitioner No.1, the sale deed executed in respect of Gat No.182/3 is illegal and arises out of money lending transaction.

(d) The sale deed executed on 10th June, 2016 was executed for the reasons that the amount noted in the stamp paper of Rs.100/- was not repaid and by luring the Respondent No.1 with the assurance of assistance in securing the bank loan amount which is evident from the fact that the electricity connection, Well and the motor pump stands in the name of the Respondent No.1.

9. The District Deputy Registrar -Respondent No 2 declared that the sale deed dated 21st March 2013 registered at Sr. No.114/2013 and sale deed dated 10th June 2016 registered at Sr. No. 2107/2016 has arisen out of money lending transaction and declared the same as illegal and cancelled the same. Respondent No.2 further directed the Petitioners to handover the possession of the subject property to respondent No.1.

10. Being aggrieved by the decision of respondent No.2 dated 13th September 2021, appeal was preferred before respondent No.3 bearing No.5 of 2021 under sub-section (4) of Section 8 of Money Lending Act. Respondent No.3 by order dated 31st May 2022 held that the Gat No.182/3 was mortgaged for a sum of Rs.1 Lakh *vide* document dated 21st March 2013 and thereafter for arrears of the payment, petitioner No.1 has taken possession of Gat No.187/2. It further held that the petitioner No.1 has executed Return Sale Receipt and respondent No.2 does not have the jurisdiction to decide the authenticity of signatures and validity of the deeds. It further held that as per the Return Sale Receipt, the petitioner No.1 has not executed the reconveyance Deed and thus the sale transactions appears to be money lending transactions. Vide order dated 31st May

2023, the Respondent No 3 dismissed the Appeal.

SUBMISSIONS:

11. Mr. Joshi, learned counsel appearing for the Petitioners has taken this Court through the recitals of sale deed of 21st March 2013 and 10th June 2016 and would point out in the sale deed of 10th June, 2016, the Respondent No 1's son was consenting party. He submits that while holding that the transaction of 2013 and 2016 are in the nature of mortgage there is no finding by either respondent No.2 or respondent No.3 about existence of debtor creditor relationship or about amount being advanced as loan. He submits that in the absence of any such findings, the respondent No.3 could not have held that the sale deeds are result of money lending transactions. He has taken this Court through the provisions of the Money Lending Act and particularly Sections 16 to 18. He would submit that the inquiry which is contemplated under Section 18 of Money Lending Act is that the immovable property should have come in the possession of money lender by way of sale etc. in the nature of the property offered by the debtor as security for loan advanced by the money lender during the course of money lending. He submits that it is only upon such a finding being arrived at, that the instrument of conveyance can be declared as invalid and possession will be directed to be restored. He submits that the document stated to have been executed on Rs.100

stamp paper on 21st March 2013, has not been signed by Petitioner No 1 as the document is signed by one Shankar Bapparao Mate whereas petitioner No.1 is Shankar Apparao Mate and there is no finding rendered about the discrepancy in the signature. He submits that the said document was not executed by the petitioner No.1.

12. He would submit that the Sale Deeds would disclose that the transactions were pure sale transactions and even if it is held that agreement for recoveyance of the land has not been executed, specific performance can be sought. He submits that it will have to be considered whether term "Sale" used in Section 18 of the Money Lending Act can be read in isolation by ignoring Section 58 (c) of the Transfer of Property Act.

13. He would further submit that the evidence has been led by respondent No.1's daughter-in-law who is the constituted attorney and she cannot depose in place of the respondent No.1 as per the settled position in law. He points out to the cross examination of the constituted attorney wherein she has admitted that in the registered sale deeds of 2013 and 2016 she has not signed the documents, that in these two documents there is no evidence of money lending transaction, that the Respondent No 1's son has consented to the Sale Deeds, and, that she has no personal knowledge of the transactions. In support he relies upon the following decisions:

1. ***Prakash (Dead) by Lr. vs. G. Aradhya and Ors., [Civil Appeal No.706 of 2015]*** ;

2. ***Rajabhau Raosaheb Gund vs. Ramchandra Tukaram Mane, [Writ Petition No.9828 of 2022];***

3. ***The Authorized Officer, Central Bank of India vs. Shanmugavelu, [Civil Appeal NO(S).235- 236 of 2024]; and***

4. ***Man Kaur (Dead) by Lrs. vs. Hartar Singh Sangha, [(2010) 10 SCC 512.]***

14. *Per contra,* Mr. Sarda, learned counsel appearing for the respondent would point out the consideration clause in the registered sale deeds of 2013 and 2016 and would submit that the sale consideration is shown to have been paid two hours before execution of the sale deeds. According to him the same is an indicator of the transaction being money lending transaction. He would further submit that as petitioner No.1 did not reconvey the property as per the agreement entered into, application was made under money lending regulation for cancellation of the documents and in the application it is specifically pleaded that financial assistance of Rs. 1 lakh at the rate of 8% interest was given by Petitioner No 1. He submits that the Assistant Registrar has conducted the inquiry under Section 16 of Money Lending Act and has stated that the property is in possession of respondent No.1. He submits that it is therefore clear that the document was mortgage and not sale. He would further point out the affidavit executed by the witness in which witnesses has specifically deposed that the suit property even as of today are in possession and cultivation of respondent No.1. He would point out the admission of the Petitioner No 1 in cross- examination that he does not have any documentary evidence to show the sale- purchase of the crops which are cultivated. He submits that subject property is uncultivable and no crop could been grown. He tenders the order of Division Bench of this Court in Writ Petition No 11744 of 2017 challenging the vires of Section 15 to 18 of Money Lending Act.

15. To counter the said submissions, Mr. Joshi would point out to the 7/12 extract which is annexed at page 73 to 79 and would submit that the same is in name of petitioner No.1 and the crop cultivation column does not show the name of respondent No.1.

16. Upon query by this Court as to how the witness for respondent No.1 has stated that the suit property is in possession of respondent No.1 and is cultivating the same and taking income therefrom, when submission is that the land is uncultivable, Mr. Sarda is unable to offer any explanation.

REASONS AND ANALYSIS:

17. Before adverting to the facts of the present case it would be apposite to refer to the statutory scheme of the Money Lending Regulation Act, 2014 which was enacted as the existing legislation was found inadequate to protect the farmers from the harassment of the money lenders. The increase in the death of the farmers by suicide to evade harassment at the hands of the money lenders prompted the legislature to make better provisions for the regulation and control of money lending in the State of Maharashtra.

18. The Act provides for issuance of money lending license and for regulation of the terms and conditions of the license. Section 16 of the Act empowers the authorized officer to cause to be produced any record or document by the money lender or any person and at the same time authorizes them to enter and search without warrant any premises where he believes such record or document is kept, for the purpose of verifying whether the business of money lending is carried out in accordance with the provisions of the Act. Under Section 17 of the Act if upon inspection of record and documents made under Section 16, the Inspecting Officer is satisfied that money lender is in possession of the property by a debtor as security for loan advanced by money lender in the course of his business of money lending without a valid license, he shall require the money lender to deliver forthwith possession of the property. Section 18 which provides for return of immovable property acquired in the course of money lending and reads thus:

(1) If, on the basis of facts disclosed, during verification under section 16 or inspection under section 17, or by an application from a debtor or otherwise, the District Registrar has reason to believe that any immovable property, which has come in possession of the money-lender by way of sale, mortgage, lease, exchange or otherwise, within a period of [fifteen years] [These words were substituted for the words 'five years' by Mah. 23 of 2014, section 8.] from the date of verification or the inspection or the date of receipt of application from debtor, in the nature of the property offered by the debtor to the moneylender as a security for loan advanced by the money-lender in course of money-lending, the District Registrar may, himself or through an inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the transaction.

(2) If upon holding the inquiry as per sub-section (1), the District Registrar is satisfied that the immovable property came in possession of the money-lender as a security for loan advanced by the money-lender during the course of money-lending, the District Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid and may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be.

(3) Before passing an order or giving decision as per subsection (2), the District Registrar shall give an opportunity to the person concerned to state his objections, if any, within fifteen days from the date of receipt of notice by him and may also give personal hearing, if he so desires.

(4) Any person aggrieved by the order or decision of the District Registrar under sub-section (2) may, within one month from the date of order or decision, appeal to the Divisional Registrar :

Provided that, the Divisional Registrar may admit the appeal after expiry of the period of one month, if the appellant satisfies him that he had sufficient cause for not *preferring the appeal within the period.*

(5) The order passed by the Divisional Registrar in appeal preferred under sub-section (4) shall be final.

(6) Subject to the appeal provided under sub-section (4), the order passed or decisions given by the District Registrar under sub-section (2), shall be sufficient conveyance and it shall be the duty of every officer entrusted with the work relating to maintenance of land records under the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966), or under any other law for the time being in force, to give effect to such order in his records.

19. The statutory scheme of Section 18 makes it clear that the inquiry contemplated is firstly on the aspect of possession of the immovable property and secondly on the nature of possession i.e. it must be established that the possession is by way of security for loan advanced by the money lender during the course of money lending transaction. It is only where the twin tests are satisfied that the instrument can be declared as invalid and possession can be directed to be restored.

20. Coming to the facts of the present case, in respect of Gat NO 182/3, the Respondent No 1's case is that loan of Rs 1 lakh was taken @ 8% interest and the sale deed dated 21st March, 2013 is in fact mortgage deed evidenced from the Return Sale Receipt executed on the same day in respect of Gat No 182/3. As far as Gat No 187/2 is concerned, the case is that without payment of consideration and fraudulently the sale deed of 2016 was executed which is also mortgage deed.

21. Firstly dealing with the Sale deed dated 10th June, 2016 executed in respect of Gat No 187/2, it is not even the case of the Respondent No 1 that there was any money lending transaction between the Petitioner No 1 and Respondent No 1 leading to the execution of the sale deed and the case is of fraud.

22. The Respondent No 2 has held that the transaction of 2016 arises out of money lending transaction for the reason that the sale deed appears to have been obtained by luring the Respondent No 1 with the assurance of securing the bank loan sanctioned for repayment of the amount stated in the recital of the stamp paper of Rs 100/. To support the finding, the Respondent No 2 has observed that the electricity connection, Well and water pump is still standing in name of Respondent No 2.

23. The Respondent No 2 failed to consider that the pleaded case of the Respondent No 1 *qua* Gat No 187/2 was that of fraud and not of money lending. The pleadings of fraud would take the transaction out of purview of Money lending Act. There is no specific finding of the Respondent No 2 that there was loan transaction between the Petitioner No 1 and the Respondent No.1 or that Gat No. 187/2 was mortgaged as security for the said amount. The Respondent No 2 failed to consider that the Respondent No 1's son was consenting party to the Sale Deed dated 10th June, 2016. There is no basis for the Respondent No 2 to come to a finding that the sale deed has been executed as Respondent No 1 has not been able to repay the amount stated in the Return Sale Receipt when it is not the pleaded case of the Respondent No 1. Further without any nexus between the return sale receipt of 2013 and the registered sale deed of 10th June 2016 respondent No.2 has arrived at a finding that registered sale deed of 2016 has been executed as there was non repayment of the sum mentioned in return sale document.

24. Coming to the transaction in respect of Gat No 182/3, the Respondent No 2 has held on the basis of evidence adduced that the Petitioner No 1 had executed the Return Sale Receipt and on that basis has come to a finding that the sale transaction in respect of Gat No 182/3 has arisen out of money lending transaction. The Return Sale Receipt has been executed on Rs 100/- stamp paper and states that the sale deed has been executed in respect of Gat No 182/3 for sum of Rs 3,00,000/- and within period of two years upon repayment of Rs 3,00,000/- Reconveyance Deed will be executed. The Return Sale Receipt does not speak about any payment of interest on principle amount or the expenses to be incurred for reconveyance aggregating to Rs.3,00,000/ which was the pleaded case of Respondent No.1.

25. The Appellate Authority held that it does not have the jurisdiction to decide the validity of the Return Sale Receipt and despite the validity being under challenge has held that the Petitioner No 1 has failed to execute the Reconveyance Deed and therefore the transaction appears to have arisen out of money lending transaction.

26. There is no finding rendered that the Petitioner No 1 was carrying out money lending transaction and the sale deeds are in fact mortgage deeds and that the possession of the properties has come in the hands of the Petitioner No 1 as security for the loans advanced. The case of the Respondent No 1 was that the Petitioner No 1 was carrying out money lending business in the village, however no witness from the village has been examined to show specific instances of money lending transactions entered by the Petitioner No 1. The Respondent No 2 has returned a finding of the sale deed of 2013 to have arisen from money lending transaction based on the Return Sale Receipt executed by the Petitioner No 1. Though it is sought to be disputed by Mr. Joshi that the said receipt is not signed by the Petitioner No 1, in the Petition at paragraph 2.2, the contention is that signature of Petitioner No 1 was obtained on blank stamp paper which was used to scribe the Return Sale Receipt.

27. The issue is whether the execution of the Return Sale Receipt would render the sale deed dated 21st June, 2013 a mortgage. The

Apex Court in case of ***Prakash (Dead) by LR vs G. Aradhya & Ors*** (supra) was considering the issue whether reconveyance of the property in favour of the vendor on payment after specified period would lead to an inference that the said transaction was Mortgage Deed. The Apex Court considered the provisions of Section 58 of Transfer of Property Act, 1882 (TP Act) and the catena of decisions on the subject which had held that sale with condition of repurchase is not a lending and borrowing arrangement. The Apex Court held that by way of execution of Reconveyance Deed on the same day, would only give right to the vendor to repurchase the property.

28. The decision of the Apex Court is squarely applicable to the facts of the present case. The recital in the Sale Deed dated 21st March, 2013 discloses a purely sale transaction. The execution of the Return Sale Receipt at the most would only give right to the Respondent No 1 to repurchase the property but would not render the Sale Deed of 21st March, 2013 a mortgage. For seeking execution of the Reconveyance Deed, the remedy of Civil Court is available to the Respondent No 1.

29. The Respondent No 2 has not considered that the sale deeds do not establish any debtor creditor relationship. The Return Sale Receipt even if it is accepted has been executed by the Petitioner No 1 with full knowledge, the Respondent No 1 at the most is entitled to adopt appropriate civil remedies and the remedy under the Money Lending Act is not available to the Respondent No 1.

30. The Respondent No 2 also failed to appreciate that the case of the Respondent No 1 is that he is in possession of the properties. That being so, the Petitioner No 1 being in possession of the property as security for loan advanced which is the second requirement for invocation of Section 18 of Money Lending Act, is not satisfied.

31. The admissions given by the constituted Attorney are also relevant as she had admitted that she does not have any personal knowledge about the transactions executed in the year 2013 and 2016. It is settled position in law that the constituted attorney can depose only in respect of the facts which are personal to the knowledge of constituted attorney or in respect of the acts which are performed by the constituted attorney under the power of attorney. The constituted attorney cannot depose in place of the principal and the entire evidence in respect of the transactions once it has been admitted to not have any personal knowledge, cannot be accepted. The Constituted attorney has further admitted that in the return sale receipt of 21st March 2013 there is no mention of any money lending transaction. The Respondent No 1 has not stepped in the witness box to give evidence of the transactions of the year 2013-2016 and therefore adverse inference is required to be drawn against

Respondent No 1.

32. From the cross examination of petitioner No.1 nothing has been pointed out to show that material admissions have been elicited on the aspect of money lending transaction.

33. Respondent No.2 has also failed to appreciate that there is no evidence on record to show that there was any agreement for payment of interest or interest was in fact paid which is strong indicator of creation of debtor and creditor relationship. Respondent No.2 has accepted the case of respondent No.1 on the solitary ground of Return Sale Receipt having been executed by the Petitioner No 1. The constituted attorney who had no knowledge of transactions of 2013 and 2016 could not have deposed that the Sale Deeds arose out of money lending transactions. Though the respondent No.3 Appellate Authority has held that authenticity or validity of documents is not within purview of respondent No.3, it has thereafter proceeded to hold that the same is money lending transaction.

34. Merely because in both the sale deeds, the consideration is shown to have been paid prior to two hours of the registration cannot be construed as an indicator of money lending transaction. What was required to be determined is the true nature of the transaction which is to be ascertained from the recitals of the deed in light of surrounding circumstances. No such exercise has been carried out by the Respondent No 2 and Respondent No 3. Perusal of the Sale Deeds would indicate that there is no ambiguity in the language and therefore they must be given their true legal effect. Pursuant to the execution of the Sale deeds, the Petitioner No 1 mutated his name in the revenue records to which there is no challenge. The 7/12 extracts and crop cultivation column does not show the name of the Respondent No 1and therefore possession is shown to be with the Petitioner No 1. There is no recital in the Sale Deeds which indicates creation of debtor creditor relationship or that the transfer was security for the debt. In both the Sale Deeds there are recitals conveying the right, title and interest of the Respondent No 1 in the properties in favour of Petitioner No 1 and there is no recital of any other transaction of advance of any amount or any reference to financial need of the Respondent No 1.

35. Another aspect which is to be considered is the reliance placed by the Respondent No 2 on the inquiry report of Assistant Registrar dated 12th June, 2017 under Section 16 of Money Lending Act. The duty cast upon the Assistant Registrar while conducting an inquiry under Section 16 is to verify whether the business of money lending is being carried out and for the said purpose to seek production of any record/document or to enter and search without warrant any premises where he believes such record or document is kept. In the present case, the Assistant Registrar has conducted the site inspection of Gat No 182/3 and recorded the statements of the Respondent and other villagers. The opinion expressed in the report is that as reconveyance deed was not executed by the Petitioner No 1, the transaction arises out of money lending transaction. The exercise contemplated under Section 16 of Money Lending Act, was not done and based on the site inspection and statements of the Respondent No 1 and villagers, opinion is expressed that the sale transaction is money lending transaction, which report has been erroneously relied upon by the Respondent Nos. 2 and 3.

36. In the present case the submission of Mr. Sarda is that subject property is still in possession of respondent No.1 and if the same is accepted the primary requirement for inquiry to be commenced that immovable property has come in possession of money lender as security for loan does not get satisfied. This is despite the fact that rival claims are raised as regards possession of the property which can only be decided in Civil Court. Although the provisions of Section 18 of the Money Lending Act refers to the property which has come in the possession of money lender by way of sale, what assumes significance is that possession should be as security for loan advanced. In that view of the matter, there has to be a finding by the concerned

Authority that transaction was in fact of mortgage satisfying the conditions of Section 58 (c) of the Transfer of Property Act, 1882.

37. In the case of ***Man Kaur (Dead) By Lrs. vs. Hartar Singh Sangha, [(2010) 10 SCC 512]*** the Apex Court summarized the position as to who should give evidence in regard to the matter involving personal knowledge *qua* power of attorney holder and has held that if the power of attorney holder cannot depose or given evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal of which principal alone has personal knowledge. In the present case, it is specific admission of the constituted attorney that she has no personal knowledge of the transactions of the year 2013-2016. The constituted Attorney has admittedly not done any act or handled any transaction in pursuance of power of attorney granted by the principal and had at no point of time participated in the transaction. In that event, the evidence of the Constituted Attorney could not have been accepted by respondent Nos. 2 and 3.

38. As far as the decision in the case of ***Surya Dev Rai vs. Ram Chander Rai and Ors. [(2003) 6 SCC 675]*** relied upon by learned counsel for respondent No.1, the Apex Court has held that supervisory jurisdiction under Section 227 of the Constitution can be exercised where the subordinate Court has exercised jurisdiction available to it in a manner not permitted by law and has resulted in failure of justice.

39. The challenge to the vires of Section 15 to 18 of Money Lending Act pending for consideration before the Division Bench will not have any impact on the present proceedings. The purpose of the enactment of Money Lending Act was to prevent exploitation of farmer-debtors at the hands of money lender. The purpose is not to thwart the valid and legal sale transactions which may be entered into by the agriculturists in respect of their lands in favour of third parties. It is for this reason that Section 18 of Money Lending Act lays down the parameters of the inquiry required to be conducted before declaring the instrument of conveyance as invalid and restoration of the property to the debtor. There has to be specific finding of existence of money lending transaction and the possession being handed over as security for loan advanced by the money lender in course of money lending. The true character of the document is to be ascertained by considering the recitals contained therein and viewed in light of the attending circumstances. The nature of the document has to be ascertained as one of mortgage. In the absence of any such specific findings there can be no further direction for cancellation of instrument or restoration of the possession.

40. The Sale Deeds dated 21st March, 2013 and 18th June, 2016 cannot be construed as mortgage and there is no evidence to show that possession of the properties were handed over as security for loan transaction. On the contrary what is sought to be contended is that sale deeds are loan transactions as possession of the properties is retained by respondent No.1. Nothing has been shown to demonstrate creation of debtor-creditor relationship by execution of the documents.

41. Before parting, it needs to be noted that the order of the Respondent No 2 runs in 33 pages wherein the application, reply, evidence and the written arguments have been reproduced in 32 pages and in one and half page the issues have been framed and findings have been rendered. The authorities are vested with the power under the Money Lending Act to upset sale transactions if found to be arising out of money lending transactions and considering that the right to property is impacted, it is expected that the authorities would render reasoned findings while declaring the validity of the sale transactions and directing restoration of properties to the vendors.

42. In light of the above, I am of the opinion that the respondent Nos.2 and 3 have exceeded the jurisdiction vested in them resulting in grave injustice being caused to the petitioners who are purchasers of the suit property which deserves interference under Article 227 of

Constitution of India.

43. Resultantly, Petition is allowed. The impugned order dated 31st May 2023 passed in Appeal No.5/2021 by respondent No.3 and the judgment and order dated 13th September 2021 passed in the Money Lending Suit No.23/2017 by respondent No.2 are hereby quashed and set aside.

44. In view of disposal of petition, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]