

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 511 OF 2019

WITH

CIVIL APPLICATION NO.1204 OF 2019

Anna Gulabrao Sawase And Anr.

...Petitioners

Versus

Balaso Bapurao Sawase

...Respondent

....

Mr. Sushant Prabhune (VC), a/w. Ms. Mamta Pandey for Appellants.

Mr. Sagar Joshi, for Respondent.

....

CORAM : SANDEEP V. MARNE, J.

DATED : 14 FEBRUARY 2024.

P.C. :

By this Appeal Appellants challenge Judgment and Decree dated 26 July 2018 passed by District Judge-4, Baramati dismissing Civil Appeal No.7 of 2011 and confirming Judgment and decree dated 19 June 2010 passed by the Jt. Civil Judge, Jr. Division, Baramati in Regular Civil Suit No.106 of 2005.

2. I have heard Mr. Prabhune, the learned counsel appearing for Appellants and Mr. Joshi, the learned counsel appearing for Respondent.

3. After having considered submissions canvassed by the learned counsel appearing for parties and after going through the Judgments delivered by the Trial Court and First Appellate Court it is seen that both the Courts have unnecessarily concentrated on the issue of proof of execution of the

document dated 18 October 2000. The issue involved in the suit is about nature of transaction effected between the parties by document dated 18 October 2000. Defendant did not dispute execution of the document and specifically admitted it's execution in the written statement. In the light of such admission given by the Defendant, it was not even necessary for the Plaintiff to prove that the document was indeed executed. The Trial Court however refused to read the document dated 18 October 2000 by recording a finding that Plaintiffs did not prove the same. In my view, it was not necessary for the Plaintiffs to prove that document when the Defendant did not deny it's execution. Instead Trial Court ought to have decided the real question of controversy between the parties which is about exact nature of transaction effected by document dated 18 October 2000. The First Appellate Court has unfortunately not corrected the error committed by the Trial Court. The only defence that the Defendant took in his written statement is that the effected transaction is of sale and not mortgage of the suit property. On the other hand, it is the contention of the Plaintiffs that the document effected mere mortgage by conditional sale and not an absolute sale.

4. Mr. Joshi, the learned counsel appearing for Respondent would submit that instead of admitting Appeal, the suit be remanded for fresh hearing for the purpose of determining exact nature of transaction effected by the document dated 18 October 2000. Mr. Prabhune is agreeable to the suggestion.

5. Both Mr. Prabhune and Mr. Joshi would submit that the evidence of parties is already recorded and therefore it is not necessary to record fresh evidence for the purpose of deciding the nature of transaction

effected by document dated 18 October 2000. In that view the matter and at with the consent of the learned counsel appearing for parties I proceed to pass the following Order :

- i) Judgment and decree dated 26 July 2018 passed by District Judge-4, Baramati in Civil Appeal No.7 of 2011 as well as Judgment and decree dated 19 June 2010 passed by the Jt. Civil Judge, Jr. Division, Baramati in Regular Civil Suit No.106 of 2005 are set aside.
- ii) Regular Civil Suit No.106 of 2005 shall stand restored on the file of Civil Judge, Jr. Division, Baramati for being decided afresh.
- iii) Trial Court shall proceed to determine the nature of transaction effected by document dated 18 October 2000 which is already marked as Exhibit.
- iv) Considering the fact that the suit has been pending since year 2005, Trial Court is requested to expedite hearing of the suit and to make an endeavor to decide the same as expeditiously as possible preferably within a period of 06 months from today.
- v) All the contentions of the parties on merits are kept open.

6. With the above directions, Second Appeal is disposed of. Since the Appeal is disposed of nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.