



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

SECOND APPEAL NO.356 OF 2022

APPLICANTS

Original plaintiff on record.

- : 1. Shri Narendra Ramrao Lunge,
Aged about 65 years, Occu.
Labourer, R/o Khopada
Tq. Morshi, Distt. Amravati
Mobile No.919359645274
2. Sau. Alka w/o Ramrao Bobade,
Aged about 53 yrs. Occu. Labourer,
R/o Kharwadi, Tq. Chandur Bazar,
Distt. Amravati

//VERSUS//

RESPONDENTS

Original Respondent on
R.A.

- : 1. Shri Sitaram s/o Dinkarrao Gayakwad,
Defendants
Aged about 65 years, Occu. Money
Lender & Business, R/o Siddhanath
Jewelers, Near Weekly Market,
Morshi, Tq. Morshi, Dist. Amravati
2. Shri Pramod s/o Janraoji Wankhade,
Aged about 52 years, Occu. Money
Lender & Private Service, R/o
Siddanath Jewelers, Near Weekly
Market Morshi, Tq. Morshi, Distt.
Amravati
3. Shri Milind S/o Kisanrao Meshram
Aged about 48 years, Occu. Money
Lender R/o Pimpri (Thugaon), Tq.
Chandur Bazar, Dist. Amravati
4. Shri Balkrushna s/o Laxmanrao
Bhokare, Aged about 36 years,
Occ. Agriculturist
5. Shri Arun s/o Laxmanrao Bhokare,
Aged about 48 years,

Occu. Agriculturist

6. Shri Raju s/o Laxmanrao Bhokare
(Dead), through his legal heirs
 - i. Smt. Rekha wd/o Raju Bhokare,
Aged – Adult, Occu: Household
 - ii Abhishek S/o Raju Bhokare,
Aged – Adult, Occ: Education
 - iii Mayur s/o Raju Bhokare,
Aged – Adult, Occ: Education
7. Shri Subhash s/o Laxmanrao Bhokare,
Aged about 43 years,
Occu. Agriculturist
All Resp./Deff. Nos. 4 to 7 are R/o
Khopada Tq. Morshi, Distt. Amravati
8. The Amravati District Central Co-
operative Bank Ltd. Branch at Morshi,
Tq. Morshi, Distt. Amravati, through
its Branch Manager

Mrs. S. W. Deshpande, Advocate for appellants.

Mr. Gayatri R. Diwe, Advocate for respondent No.3.

Mr. D.P. Dapurkar, Advocate for respondent Nos.4, 5 and 7.

CORAM : G. A. SANAP, J.

DATED : 1st MARCH, 2024

ORAL JUDGMENT

Heard.

2. ADMIT. Heard finally with the consent of learned
Advocates for the parties.

3. In this second appeal, the challenge is to the judgment and decree dated 14/11/2019 passed by the learned District Judge-1 Amravati, whereby the learned District Judge confirmed the judgment and decree passed by the learned Joint Civil Judge (Junior Division) Morshi and dismissed the appeal filed by the appellants.

4. At the time of the issuance of notice following substantial question of law has been framed:

“i) Whether the ten sale deed transactions can be considered as security towards money transaction particularly when the documentary evidence 7/12 extract regarding possession and the evidence of the witnesses admitted that during the tenure of all the ten sale deed transactions, the possession of the suit field was with the appellants only?”

5. Background facts:-

The appellants are the original plaintiffs and the respondents are the original defendants. According to the appellants, appellant No.1 and his deceased mother were in need of money. Therefore, they approached respondent Nos.1, 2 and 3.

Respondent Nos.1 to 3 agreed to advance loan to them on the condition that they should execute the sale deeds of their property in their favour. Considering the dire need of the plaintiffs, they had no alternative than to submit to the terms of respondent Nos.1 to 3. Mother of appellant No.1 during her lifetime, executed two sale deeds in favour of respondent No.1 and respondent No.4. Appellant No.1 executed one sale deed in favour of respondent No.2, one sale deed in favour of respondent No.3 and one sale deed in favour of respondent No.4. On the date of execution of the sale deeds, the possession of the suit property was not handed over to the respondents. The transaction was not out - and -out sale transaction. It was a money lending transaction. The sale deeds were nominal. Respondent Nos. 1 to 3 had agreed to re-transfer the lands on repayment of the loan. According to the appellants, despite repayment of the loan, they did not transfer the lands in their favour.

6. It is further case of the appellants that respondent Nos.1, 2 and 3 transferred the lands in favour of respondent Nos.4 to 7. The sale deeds executed by respondent Nos.1 to 3 in favour of respondent Nos.4 to 7 are not binding on the appellants. The sale deeds are illegal. Respondent Nos.1 to 3 are doing illegal money

lending business. They have illegally transferred the lands of the appellants in favour of respondent Nos.4 to 7.

7. The appellants initially contended that possession of the lands was with them. However, when their application seeking a temporary injunction at Exh.5 restraining the defendants from disturbing their possession was rejected, they amended the plaint contending that the respondents took illegal possession of the lands. On these averments, the appellants prayed for a decree.

8. Respondent Nos.1 to 7 opposed the suit. Respondent No.1 has contended that not a single sale deed was executed in his favour by the plaintiffs or by the mother of plaintiff No.1. The sale deed of one land was executed by Anna Raoji Suryawanshi in his favour. The said land was purchased by Anna Raoji Suryawanshi from the mother of plaintiff No.1. Respondent Nos.1 to 3 denied the allegations of illegal money lending transactions. According to respondent Nos.2 and 3, initially the mother of plaintiff No.1 and later on plaintiff No.1 sold their agricultural lands by different sale deeds in their favour. They paid consideration to the plaintiffs. The sale deeds were duly registered. The transaction was out - and - out sale transaction. It

was not a nominal transaction, as contended by the appellants. Respondent Nos.1 to 3 further contended that since they were purchasers of the lands under various sale deeds and became absolute owners on the basis of the sale deeds, they sold those lands to respondent Nos.4 to 7 under different sale deeds. The said transaction was not objected by the appellants. In fact, it is contended that appellant No.1 was an attesting witness to more than one sale deed executed in favour of respondent Nos.4 to 7.

9. Respondent Nos.4 to 7 contended that they had nothing to do with transactions between the appellants and respondent Nos.1 to 3. They purchased the lands under different sale deeds from respondent Nos.1 to 3. They are *bona fide* purchasers for valuable consideration. They have been in possession of the lands.

10. On these pleadings, the parties went for trial before the trial Court. The plaintiffs-appellants examined two witnesses, namely appellant No.1 and one independent witness. The defendants examined three witnesses. DW-1 is the defendant No.1, DW-2 is the defendant No.2 and DW-3 is the defendant No.7. Learned trial Judge, on threadbare analysis of the oral and documentary evidence, found that there was no substance in the

suit and ultimately dismissed the suit. The challenge to this judgment and decree before the District Judge, Amravati met with the same fate. The District Judge Amravati dismissed the appeal. The appellants are before this Court in a second appeal. The substantial question of law has been framed on the date of issuance of notice.

11. I have heard learned Advocate for the parties. Perused the record and proceedings.

12. Learned Advocate for the appellants submitted that there is voluminous oral and documentary evidence to prove that the sale deeds executed in favour of respondent Nos.1 to 3 were nominal sale deeds by way of security for the loan transaction. Learned Advocate submitted that the nature of the transaction reflected from the sale deeds and voluminous oral and documentary evidence available on record is sufficient to prove that respondent Nos.1 to 3 are indulging in illegal money lending business and the sale deeds executed in their favour by plaintiff no.1 and by the mother of plaintiff No.1 were nominal sale deeds for the purpose of security of the loan. Learned Advocate took me through the record and pointed out that appellant No.1 in his evidence has stated number of instances to substantiate their

contention that respondent Nos.1 to 3 are doing illegal money lending business. Learned Advocate further submitted that the number of sale deeds within the span of one or two years clearly suggest that it was not an out and out sale transaction. Learned Advocate further submitted that the appellants continued to possess the suit lands after the execution of the sale deeds. In order to substantiate this contention, reliance has been placed on the 7/12 extracts. Learned Advocate submitted that after rejection of the temporary injunction application at Exh.5, filed in the suit, forcible possession of the lands under different sale deeds was taken by respondent Nos.1 to 7. Learned Advocate submitted that the Courts below have not properly appreciated the 7/12 extracts, coupled with the oral evidence of the witnesses, which showed the possession of the appellants over the lands. Learned Advocate submitted that the Courts below have not properly appreciated the evidence and as such, the decisions are perverse.

13. Learned Advocate for respondent Nos.1 to 3 submitted that no evidence has been adduced by the appellants to prove that respondent Nos.1 to 3 are doing illegal money lending business. Learned Advocate pointed out that the appellants have relied upon other transactions between respondent Nos.1 to 3 and other

villagers, but they have failed to prove the relevant documents. Learned Advocate submitted that the issue of possession was hotly contested at the stage of the Exh.5 application for temporary injunction and a finding was recorded at that time that the appellants were not in possession of the land and therefore, the prayer for temporary injunction was rejected. Learned Advocate submitted that the appellants have miserably failed to prove their claim on all counts. Learned Advocate submitted that the respondents have adduced cogent and reliable evidence to establish their possession over the suit lands and therefore, the 7/12 extracts, which are prepared for fiscal purpose, would lose its significance. Learned Advocate submitted that the series of sale deeds executed of the lands of the appellants in favour of the respondents by itself would not indicate that the transaction was a money lending transaction. Learned Advocate submitted that all the sale deeds are registered and as such, there is a presumption in favour of the registered sale deeds of its genuineness. Learned Advocate submitted that both the Courts made threadbare analysis of the evidence and on doing so have negated the claim of the appellants. Learned Advocate submitted that there is no mistake or perversity in findings recorded by the Courts below.

14. Learned Advocate for respondent Nos.4 to 7 submitted that they are the subsequent purchasers of the suit lands from respondent Nos.1 to 3. They are not concerned with the transaction between the plaintiffs and respondent Nos.1 to 3. They paid valuable consideration for the purchase of those lands. It is submitted that they are *bona fide* purchasers.

15. I have minutely perused the record and proceedings. The Courts below have held that the appellants have failed to prove that the sale deeds were nominal sale deeds executed by way of security for the loan amount. The Courts below have held that the appellants have miserably failed to prove that respondent Nos.1 to 3 are doing illegal money lending business and the nominal sale deeds were executed in their favour as a result of the money lending transaction. A perusal of the record would show that not a single sale deed was executed either by the mother of appellant No.1 or by appellant No.1 in favour of respondent No.1. Respondent No.1 purchased one land from Anna Raoji. Anna Raoji had purchased the said land from the mother of plaintiff/appellant No.1. Therefore, the contention of the appellants that the sale deed executed in favour of respondent Nos.1 by Anna Raoji was by way of security for money lending transactions

cannot be accepted. As far as respondent Nos.2, 3 and 4 are concerned, they have purchased the lands by way of registered sale deeds. The appellants have adduced the evidence to establish their contention that the sale deeds were nominal sale deeds by way of security for the loan amount borrowed from respondent Nos.1, 2 and 3. The appellants have not adduced any independent evidence. According to the appellants respondent Nos.1 to 3 have obtained the sale deeds from the other villagers in respect of their lands in the money lending business with those villagers. The appellants have failed to examine those persons. No reason has been put forth for the non examination of such witnesses.

16. The mother of appellant No.1, during her lifetime did not challenge two sale deeds executed by her, i.e. namely one in favour of respondent No.2 and one in favour of respondent No.4. The appellants have failed to justify their contention that they have the right to challenge the sale deeds executed by the mother of appellant No.1. It is to be noted that if the transaction was a money lending transaction then the mother of plaintiff No.1 would have taken the necessary steps to get the land re-transferred to her name on repayment of the loan. The evidence of the appellants is silent about it.

17. It needs to be stated that there is presumption of genuineness in case of registered sale deed unless it is otherwise proved. The appellants were expected to adduce cogent and reliable evidence to prove their contention that the transaction was a money lending transaction. They were also required to prove that respondent Nos.1 to 3 are doing illegal money lending business. They have not examined independent witness. It is further pertinent to note that plaintiff-appellant No.1 has acted as an attesting witness to more than one sale deed executed in favour of respondent Nos.4 to 7 by respondent Nos.2 and 3. It is to be noted that this conduct of appellant No.1 is self damaging. Appellant No.1 in the ordinary circumstances, first and foremost was expected to object for the transfer of the lands in favour of respondent Nos.4 to 7. He did not raise any objection. The appellants did not issue any notice or communication to the respondents. Appellant No.1 has admitted that he had acted as an attesting witness to more than one sale deeds. In my view, the conduct of appellant No.1 would speak volumes about the real nature of the transaction. In the teeth of the above stated material and their conduct, the Court has to appreciate 7/12 extracts relied upon by the appellants to establish their possession. In my view,

the 7/12 extracts would be of no relevance to establish the possession of the appellants. It needs to be stated that the temporary injunction sought for by the appellants relying upon the 7/12 extracts to establish their possession was rejected. At the stage of decision of the said application, they were not found in possession of the suit property. The appellants have failed to established by leading cogent and reliable evidence that the possession of the lands was not delivered to the respondents as mentioned in the sale deeds on the date of execution of the sale deeds. In my view, the Courts below have properly appreciated the evidence on record. The Courts below have not committed any mistake, illegality or perversity. As such, I am of the view that there is no substance in the second appeal. The substantial question of law is answered accordingly.

18. The appeal is accordingly dismissed.

19. The Second Appeal stands disposed of. No order as to costs. Pending applications, if any stand disposed of.

(G. A. SANAP, J.)

