2024:BHC-NAG:3751

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

WRIT PETITION NO. 1398 OF 2020

Shri Pramod Girdharilal Malani,
Aged about 46 yrs., Occu. Farmer,
R/o. Kutasa, Tq. Akot, District :
Akola.

.... **PETITIONER.**

// **VERSUS** //

1. Smt. Vanmala Ramdas Kapse,
   Aged about 59 yrs., Occu.:Farmer,
   R/o. New Tapadia Nagar, Akola,
   Tq. and District : Akola.

2. Ku. Kanchan Ramdas Kapse,
   Aged adult, Occu.: Farmer,
   R/o. Akot, Tq. Akot, District:
   Akola.

3. District Deputy Registrar,
   Cooperative Societies, Akola.

4. Divisional Joint Registrar,
   Cooperative Societies-cum-
   Divisional Joint Registrar,
   Money Lending, Amravati.

.... **RESPONDENTS.**

Shri Anup J. Gilda, Advocate for Petitioner.
Shri A.M.Ghare, Advocate for Respondent Nos.1 and 2.
Shri Shyam Bissa, A.G.P. for Respondent Nos. 3 and 4.

CORAM : ANIL S. KILOR, J

<u>DATE OF RESERVING THE JUDGMENT : 03/01/2024</u>
<u>DATE OF PRONOUNCING THE JUDGMENT: 28/03/2024</u>

<u>ORAL JUDGMENT</u> :

1. Heard.

2. **RULE**. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. This petition takes exception to the order dated 24/02/2020, passed by the Divisional Joint Registrar, Cooperative Societies, Amravati Division, Amravati and the Divisional Joint Registrar Money Lending in appeal No. 14 of 2019 arising out of the order dated 27/02/2019, passed by the District Deputy Registrar, Cooperative Societies, Akola and District Deputy Registrar, Money Lending, Akola, cancelling the sale deed dated 02/07/2012, executed by the respondent Nos. 1 and 2 in favour of the petitioner, by holding that it was a money lending transaction.

The brief facts of the present case are as under :

4. It is the case of respondent No.1 that her husband Ramdas Pandurangji Kapse died on 04/07/1998. She has two children namely, Kanchan and Mangesh. It is contended that after the death of her husband, because she was not getting sufficient income from her agricultural field and since she wanted to perform marriage of her daughter and to help her son to start business, she was in need of money. It is stated that one Damodhar Uttam Umale took her to the petitioner, who advanced her loan of Rs.7,00,000/- on a condition to execute a nominal sale deed of land in question as a security to the loan and to pay interest @ 3.5%.

5. It is stated that despite the repayment made by the respondent Nos. 1 and 2 of the loan amount and the interest amount, the petitioner refused to re-convey the land in question to the respondent Nos. 1 and 2.

6. Therefore, the respondent No.1 filed an application before the District Deputy Registrar, Cooperative Societies, Akola under Section 18 of the Maharashtra Money Lending (Regulation)Act, 2014 (hereinafter referred to as "the Act of 2014"), alleging that the petitioner had indulged in illegal money lending and thereby sought to set aside the sale

deed dated 02/07/2012, executed by the respondent Nos. 1 and 2 in favour of the petitioner.

7. The District Deputy Registrar thereupon, directed the Assistant Registrar, Cooperative Societies, Akot to make an enquiry into the matter and submit his report. Accordingly, on 29/09/2018, the Assistant Registrar submitted his report to the respondent No.3-District Deputy Registrar. Whereupon, the respondent No.3 passed the order dated 27/02/2019, holding the Sale Deed dated 02/07/2012 as illegal and directed the petitioner to return back the field of the respondent Nos. 1 and 2.

8. Feeling aggrieved by the same, the petitioner preferred an appeal before the Divisional Joint Registrar, Cooperative Societies which came to be dismissed vide impugned order dated 24/02/2020. Hence, this petition.

9. I have heard the learned counsel for the respective parties.

10. Shri Gilda, learned counsel for the petitioner argues that both the authorities below have committed error in holding that the sale deed dated 02/07/2012, was executed as security in a money lending transaction.

11. It is submitted that there is a heavy burden on the respondents to prove that, the registered sale deed is not a genuine one. It is submitted that the respondents have not entered into the witness box and thereby they failed to discharge their burden. For this purpose, the learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court of India in the case of *Martin Cashin and others ..vs.. Peter J. Cashin*, reported in **AIR 1938 PC 103**, *Ishwar Bhai C. Patel ..vs.. Harihar Behra*, reported in **(1999)3 SCC 457**, *Jamila Begum ..vs.. Shami Mohd.*, reported in **(2019) 2 SCC 727**.

12. It is argued that despite the fact that sufficient documentary evidence was produced by the petitioner, both the authorities committed error in recording the finding that the petitioner is not in possession. It is further submitted that the cross-examination of petitioner's witness-Damodhar Umale was not considered in right perspective.

13. It is submitted that in absence of mandatory certificate under Section 65-B(4) of the Indian Evidence Act, 1872, both the authorities below have relied upon the electronic evidence i.e. mobile conversation allegedly have taken place between the respondent No.1

and the petitioner. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Ravinder Singh ..vs.. State of Punjab*, reported in **(2022) 7 SCC 581**.

14. It is further argued that the respondent authorities have wrongly gave weightage to 39 Sale Deed transactions entered into by the petitioner, his close relations and friends to arrive at a conclusion that the petitioner had indulged in money lending transaction earlier also.

15. On the other hand, Shri A.M. Ghare, learned counsel for the respondent Nos. 1 and 2 supports the findings recorded by the respondent Nos. 3 and 4 and submits that both the authorities have rightly held in favour of the respondent Nos. 1 and 2 on the basis of certain admissions given by the petitioner in his cross-examination.

16. It is submitted that there is no perversity or illegality committed by both the authorities below holding in favour of the petitioner. Accordingly, the learned counsel for the respondent Nos. 1 and 2, prays for dismissal of the present writ petition.

17. Shri Bissa, learned A.G.P. reiterates the submissions of the respondent Nos.1 and 2 and prays for dismissal of the present writ petition.

18. In light of the rival contentions of the parties, I have perused the record and the impugned orders.

19. In the matter at hand, a question falls for consideration is whether both the authorities, namely, respondent Nos.3 and 4 have rightly arrived at a conclusion that the sale deed dated 02/07/2012 was executed by the respondent Nos.1 and 2 by way of security for the loan advanced by the petitioner in the course of his business of money lending without valid licence ?

20. Before moving further it would be beneficial to consider the background behind enacting the Maharashtra Money Lending (Regulation) Act, 2014.

21. The harassment to the farmers-debtors at the hands of Money Lenders, resulting in the frequent suicides by the farmers was a matter of great concern. Hence, to effectively prevent such harassment at the hands of money-lenders and since the then existing enactment on

money lending was found to be inadequate to protect the farmers-debtors from the harassment by the money-lenders, it had become expedient for the Government to enact the Act of 2014.

22. In the above referred backdrop, let us take into consideration the relevant provisions of the Act of 2014.

23. Section 15 of the Act of 2014 deals with Registrar General and his subordinates to have powers of Civil Court. Section 15 says that for the purposes of sections 6 and 16, the Registrar General, Divisional Registrar, District Registrar, Assistant Registrar and the officer authorized under section 16; and for the purposes of sections 14 and 18, the District Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him on oath, compelling the production of documents and material objects, issuing commissions for the examination of witnesses and proof of facts by affidavits.

24. Section 16 of the Act of 2014 deals with power of authorized officer to require production of records or documents.

25. Whereas, Section 17 of the Act of 2014 deals with the disposal of property pledged with money-lender carrying on business of money-lending without valid licence. Under Section 17(1) if upon the inspection of the record and documents made under Section 16, the Inspecting Officer is satisfied that the Money Lender is in possession of the property pledged to him by a debtor as security for the loan advanced by money-lender in the course of his business of money lending without a valid licence, the Inspecting Officer shall require the money-lender to deliver forthwith the possession of such property to him.

26. Section 18 of the Act of 2014 deals with the return of immovable property acquired in course of money-lending. This provision says that 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, in the nature of property offered by the debtor to the money-lender as a security for the loan advanced by the money-lender in the course of money lending, the District Registrar may, himself or through an

Enquiry Officer to be appointed for the purpose in the manner prescribed, hold further enquiry into the nature of transaction.

27. Sub-section (3) of Section 18 of the Act of 2014 provides that before passing an order or giving decision as per sub-section (2), the District Registrar shall give an opportunity to the person concerned to state his objections, if any, within 15 days from the date of receipt of notice by him and may also give personal hearing, if he so desires.

28. Rule 17 of the Maharashtra Money Lending (Regulation) Rules, 2014 (hereinafter referred to as "the Rules of 2014") prescribed procedure for the Return of Immovable Property acquired or usurped in course of money-lending.

29. Sub-rule (10) of Rule 17 of the Rules of 2014 says that the District Registrar or the inquiry officer may examine the applicant or such other person as he may deem fit which he considers necessary by inspecting the documents in order to ascertain the real nature of the transaction.

30. From the above referred provisions, it is evident that the mode which is to be adopted to find out the real nature of the transaction

and for the satisfaction that the money lender is in possession of the property pledged to him by a debtor as security of the loan advance by the money lender in course of his business of money lending without a valid licence, is by way of an enquiry, which cannot be equated with the suit filed in the Civil Court.

31. Section 17 of the Act of 2014 empowers the Inspecting Officer to ask the money-lender to deliver forthwith the possession of such property to him, on satisfaction upon the inspection of record and the documents that, the money lender is in possession of the property pledged to him by a debtor as security for the loan advanced by money-lender in the course of business of money lending without a valid licence.

32. Furthermore, under Section 18 of the Act of 2014, if 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, in the name of property offered by the debtor to the money lender as a security for the loan advanced by the money lender in the course of money lending, he may himself or through an Enquiry Officer, to be appointed for the purpose, in the

manner prescribed, hold further enquiry into the nature of the transaction, 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.

33. The District Registrar or the Enquiry Officer, for the above referred enquiry and purpose, may examine the applicant or such other person as he may deem fit which he considers necessary by inspecting the documents.

34. Thus, in view of the provision, sub-Rule (10) of Rule 17 of the Rules of 2014, I do not find favour with the argument of the petitioner that, the fact of not entering into the witness box, goes adverse to the petitioner or an adverse inference needs to be drawn against the respondent Nos. 1 and 2 for the said reason. Accordingly, the judgments in the cases of *Martin Cashin* (supra), *Ishwar Bhai C. Patel* (supra), *Jamila Begum* (supra) are of no assistance to the petitioner.

35. Moving further, in the present matter, in all seven witnesses were examined out of which five have deposed in favour of the respondent Nos. 1 and 2. As far as other two witnesses are concerned,

one was the petitioner and another was Damodhar Uttam Umale, who took the respondent No.1 to the petitioner with a request to advance her loan. These two witnesses deposed in favour of the petitioner.

36. In the cross-examination of the petitioner, he has admitted the following facts :

a) Before execution of the sale deed no agreement was executed or earnest amount was paid to the respondents.

b) On the date of sale deed, in the 7/12 extract there were entries in respect of loan on the said land to the tune of Rs.1,50,000/- and Rs.1,80,000/- i.e. total Rs. 3,30,000/-.

c) He paid Rs.5,00,000/- after paying the loan amount to the bank.

d) There is no mention in the sale deed about the date of payment of Rs.5,00,000/- or whether it was paid by cash or any other mode.

e) The payment was made two hours before execution of the sale deed before the Sub-Registrar.

f) He purchased 2 H 2 R out of total 5 H 29 R land.

g) No measurement was carried out before execution of the sale deed.

37. The above referred admissions are crucial which falsify the case of the petitioner that he purchased the land in question for Rs.5,00,000/- for the reason that, if the version of the petitioner is accepted that he cleared the loan amount of Rs.3,30,000/- before execution of sale deed, with the statement that he paid Rs.5,00,000/- to the respondent Nos.1 and 2 before the execution of the sale deed, the total consideration amount comes to Rs.8,30,000/-. Whereas, in the sale deed the total value of the land has been shown as Rs.5,00,000/-.

38. As far as possession is concerned, admittedly, the sale deed was executed on 02/07/2012 and the complaint was made by the respondent No.1 to the District Deputy Registrar on 14/08/2017. The documents filed on record by the petitioner to show that he came in possession immediately after execution of sale deed and he is in continuous possession of the land in question, are of the period after the complaint by the respondent No.1 to the District Deputy Registrar.

39. There is no document filed on record to show that immediately after the sale deed executed on 02/07/2012, the petitioner received the possession of the land and he thereafter continuously cultivated the same.

40. The adjoining owners of the land have deposed in favour of the respondents in respect of their possession. Whereas, there is no such evidence available on record in favour of the petitioner.

41. The petitioner has placed much reliance upon the 7/12 extract of 2014-15. However, in the said document there is no mention about the possession of the petitioner, whereas, it discloses the ownership. Similarly, the Crop Statement filed on record is of 2017-18 and the Gaon Namuna-8 Revenue Record is of the year 2018-19. Thus, the above referred documents do not establish the fact of possession of the petitioner immediately on execution of the sale deed.

42. As regards the document filed in respect of payment of tax is concerned, it speaks about the taxes paid by the petitioner for the year 2016-17 and 2017-18. There is no document showing that the taxes were paid from the financial year immediately after the alleged purchase of the land in question.

43. Moreover, except the above referred document showing that for two years the petitioner paid taxes, there is no other document to show that the petitioner regularly paid taxes from 2012 onwards.

44. In the above referred backdrop, it is pertinent to note that during the enquiry, the respondents have produced 39 sale deeds to establish the fact that the petitioner is doing money lending business without licence. Both the authorities below have considered those sale transactions and have arrived at a concurrent conclusion that the petitioner is doing the money lending business without any licence.

45. The petitioner has not denied the above referred 39 transactions. The observations made by both the authorities show that the petitioner has got executed the above referred sale deeds in his own name or his wife's name or in the name of relatives.

46. In the circumstances, even if the conversation recorded in the mobile phone of the petitioner is discarded and not considered for the reason that there is no certificate produced under Section 65-B(4) of the Indian Evidence Act, 1872, the other evidence available on record by way of oral or documentary evidence is sufficient to reach to a conclusion

that the findings recorded by both the Courts below in favour of the respondents are just and proper and needs no interference. Hence, I do not find any merit in the present writ petition. Hence, it is **dismissed**.

Rule stands discharged. No order as to costs.

(ANIL S. KILOR, J)

At this stage, the learned counsel for the petitioner prays for continuation of the interim protection that was in operation during pendency of this petition, for another eight weeks, which has been opposed by the learned counsel for the respondent Nos. 1 and 2 and the learned A.G.P.

However, considering the fact that the interim relief is continued from 11/03/2020 i.e. for last about four years, I am of the opinion that no prejudice would be caused if the interim protection is continued for four weeks. Accordingly, the interim protection shall continue for four weeks from today, on expiry of which the interim protection would stand vacated automatically.

(ANIL S. KILOR, J)

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