IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 97 OF 2024
WITH
CIVIL APPLICATION NO. 4640 OF 2024

Balasaheb Bhagwat Halnor,
Age : 44 years, Occu. : Agri and Service,
Dist. A'nagar, Through P. O. A.
Dnyandeo Bhagwat Halnor,
Age : 50 years, Occu. : Agri and Service
Both – R/o Kuranpur, Tal. Shrirampur,
Dist. Ahmednagar ... **APPELLANT**
(Original Defendant)

VERSUS

Ramesh Dashrath Bhosale,
Age : 48 years, Occu. : Agri,
R/o Galnimb, Tq. Shrirampur
Dist. Ahmednagar. ... **RESPONDENT**
(Original Plaintiff)

WITH
SECOND APPEAL NO. 98 OF 2024

Mr. Warma Bharatkumar Ramdeo, Advocate For Appellant
Mr. R. N. Bhapkar, Advocate For Respondent Sole
Ms. Soniya Gandhi/Bhandari, Advocate for Respondent Sole.

CORAM : ROHIT W. JOSHI, J.
DATE : APRIL 04, 2025

JUDGMENT

. The present Second Appeal arises out of a suit for redemption of mortgage filed by the Respondent herein. The parties will be referred in the Judgment as 'Plaintiff' and 'Defendant'.

2. The Plaintiff had filed a suit for redemption of mortgage, being Regular Civil Suit No. 125 of 2016, *inter alia*, claiming that he was in need of a loan of Rs. 50,000/-, and accordingly, he had approached the Defendant for advancing the said loan amount. It is contended that in order to secure the loan amount, a document of mortgage by conditional sale was executed by the Plaintiff in favour of the Defendant. It is stated that under the document, the Plaintiff was to refund the amount within a period of five years. The document provides that in the event of failure on the part of the Plaintiff to return the amount within a period of five years, the document of conditional sale will become absolute and thereafter it will not be open for the Plaintiff to return the amount in order to reclaim the property. The argument of the learned Counsel for the Appellant/Original Defendant is that the document is in fact a deemed sale with a covenant for repurchase. Referring to the contents of the document a contention is raised that the document cannot be interpreted to be a mortgage by conditional sale within the meaning of Section 58(c) of the Transfer of Property Act. It is argued that since the amount is not remitted within the stipulated period of five years, the sale had become absolute and the right to seek re-conveyance was lost permanently.

3. As against this, Mr. Aryan Bhapkar, on behalf of the Original Plaintiff contends that perusal of the document will clearly indicate that

the relation between the parties is in fact one of borrower and lender, and therefore, there is a covenant in the document for re-conveyance of property on remittance of the loan amount, which is mentioned in the document as sale consideration. Pointing out from the findings of the learned Courts below, he contends that the transaction is definitely one of the mortgage and not of sale, as contended by the learned Counsel for the Appellant.

4. It needs to be mentioned that the covenant for repurchase is included in the same document, which is the purported sale deed. The contention of Mr. Warma that the right to repurchase the property was available only for a period of five years from the date of sale deed and thereafter the conditional sale deed was to become absolute is liable to be rejected in the light of the Judgment of the Hon'ble Supreme Court in the matter of ***Seth Ganga Dhar V/s Shankar Lal and others***[1], wherein in paragraph No.7, the Hon'ble Supreme Court has observed as under :

> *"**7.** The right of redemption, therefore, cannot be taken away. The Courts will ignore any contract the effect of which is to deprive the mortgagor of his right to redeem the mortgage. One thing, therefore, is clear, namely, that the term in the mortgage contract, that on the failure of the mortgagor to redeem the mortgage within the specified period of six months the mortgagor will have no claim over the mortgaged property, and the mortgage deed will be deemed to be a deed of sale in favour of the mortgagee, cannot be sustained. It plainly takes away*

1(1958) AIR (SC) 770

> *altogether, the mortgagor's right to redeem the mortgage after the specified period. This is not permissible, for "once a mortgage always a mortgage" and therefore always redeemable. The same result also follows from section 60 of the Transfer of Property Act."*

5. In the matter of ***Patel Ravjibhai Bhulabhai (D) through LRs. V/s Rahemanbhai M. Shaikh (D) through L.Rs. and others[2],*** the Plaintiff and Defendants were at issue with respect to interpretation of document executed by and between them, whereas the Plaintiff contended that the document was a mortgage by conditional sale, the Defendant contended that it was a document of outright sale coupled with covenant for repurchase. The relevant clause of the document is extracted hereinbelow for ready reference :

> *"**14.** ………….. In this deed condition is that the said amount of Rs.10,000.00 when we pay back to you within five years from today, you shall give back the said property to us with possession. And in the same manner, we shall have no right to ask back the same after expiry of the time limit."*

6. The said document was executed on 30/12/1960. The period of five years had thus expired on 30/12/1965. The Plaintiff-Mortgagor had filed suit for redemption in the year 1984. The Mortgagee – Defendant was placed in possession of the property, and therefore, prayer for recovery of possession was made along with prayer for redemption of mortgage. As stated above, the contention between the

2 AIR 2016 SC 216

parties was with respect to interpretation of the document. In this context, the Hon'ble Supreme Court, while interpreting the document, has held as under :

> *"**14.** .... The above condition in Exh. 23 that if the Plaintiffs (Respondents) make repayment of Rs.10,000/- within a period of five years, the Defendants shall handover the possession of property in suit back to the Plaintiffs, reflects that the actual transaction between the parties was of a loan, and the relationship was of debtor and creditor existed, as such, we are of the view that the High Court has rightly held that the deed in question Exh. 23 read with Exh. 37 is a mortgage by way of conditional sale and the decree passed in favour of the Plaintiffs does not require to be interfered with. Needless to say, since the possession of the land was handed over to the mortgagee, no interest was charged."*

7. In the matter of ***Srinivasaiah V/s H.R. Channabasappa (Since dead) by his legal representatives and others[3],*** a clause similar to one in the present case fell for consideration before the Hon'ble Supreme Court. The relevant clause in the said case is reproduced for ready reference :

> *"Within five years from the aforesaid date of this Conditional sale deed, I will repay the entire conditional sale price of Rs. 1,500/- (Rupees one thousand five hundred) to you and get executed a sale deed from you. In the event of default, after the said period of five years mentioned in this Conditional sale deed, then together with all the privileges, easements, advantages and*

3 (2017) (12) SCC 821

appurtenances whatsoever in or to the Schedule property and every part thereof belonging to or to the said Schedule property or hereinto before held, used, occupied or enjoyed or known as part and parcel thereof or appurtenant thereto shall belong to you and your legal heirs forever, free from all encumbrances, charges, liens whatsoever. Myself and my legal heirs shall have no manner of right, claim, interest or title whatsoever in or upon or in respect of the Schedule property."

8. While interpreting the said clause, the Hon'ble Supreme Court has held that the said clause indicated the transaction between the parties was a mortgage by conditional sale, as defined under Section 58(c) of the Transfer of Property Act. The reasons for holding the document as one of mortgage by conditional sale as against sale deed with covenant for repurchase are recorded in paragraph 22 and 23 of the Judgment, which read as under :

*"**22.** When we examine the nature of document in question (Ex. P-1), we are of the opinion that the document (Ex. P-1) is a mortgage with conditional sale as defined Under Section 58 (c) of the T.P. Act. This we say for following reasons: first, it is not in dispute that the Plaintiff was the owner of the suit land. Second, the parties concluded the transaction in question by executing one document (Ex. P-1). Third, the document (Ex. P-1) is styled as a "Deed of Conditional Sale". Fourth, it contains a condition that Defendant No. 1 will be allowed to remain in possession of the suit property for 5 years and enjoy the fruits of the land and that during this period, the Plaintiff will be entitled to get the suit property re-conveyed in his name on paying Rs.1500/- by getting the sale deed executed in his name and obtain possession of the suit land from Defendant No.1. Fifth, the Plaintiff offered to pay*

Rs.1500/- to Defendant No.1 with a request to resale the land to him.

23. *In our considered opinion, the aforesaid five reasons satisfies the third condition of Section 58(c) of the T.P. Act, namely, "on condition that such payment being made, the buyer shall transfer the property to the seller". It also satisfies the tests laid down by this Court in Chunchun Jha' case (supra), namely, First, the transaction is concluded in one document; Second, the document styled as a "Deed of Conditional Sale" itself contains the condition of repurchase on offering the sale money without interest for the reason that Defendant No.1 was allowed to use the land till the money is not paid back to him by the seller (Plaintiff); and Third, parties' intention as per terms of Ex.P-1 is also supported by the evidence which was accepted by the two Courts-Trial Court and the High Court."*

9. The clauses in the said reported Judgments are similar to the clause for re-conveyance in the present matter. In the light of aforesaid Judgments of the Hon'ble Supreme Court, it is clear that right of redemption cannot be curtailed by incorporating restrictive clauses in the document.

10. In view of the clear exposition of law by the Hon'ble Supreme Court, no fault can be found with the Judgment of both the learned courts below, holding the document to be the document of mortgage by conditional sale within the meaning of Section 58(c) of the Transfer of Property Act, 1882 and not a document of sale within the meaning of Section 54 of the Act of 1882, coupled with a covenant for

repurchase.

11. It is clear that the transaction between the parties is one of mortgage and not of transaction of sale with a covenant for repurchase. The terms of the document are correctly interpreted by the learned courts below. In that view of the matter, the contention raised by the learned Counsel for the Appellant cannot be accepted.

12. In my considered opinion, no substantial question of law arises for consideration in the Second Appeal. The Second Appeal is, therefore, liable to be dismissed, and is dismissed as such with no order as to costs.

13. Since the Second Appeal is dismissed, pending Civil Application No. 4640/2024 does not survive. The same stands disposed of accordingly.

[ROHIT W. JOSHI]
JUDGE

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