IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 107 OF 1988

Sopan Narsinga Gaikwad And Ano
VERSUS
Gyanoba Bhimrao Shinde And Ors

WITH CIVIL APPLICATION NO. 10334 OF 2024 IN SA/107/1988

Sopan Narsinga Gaikwad L.rs. Madhukar Sopan Gaikwad And And Ano
VERSUS
Gyanoba Bhimrao Shinde L.rs. Digambar Gyanoba And Ors

Mr. Abhijeet Rane h/f Mr. A. K. Tiwari, Advocate for appellants
Mr. Rajendrraa Deshmukkh, Senior Advocate a/w Ms. Ashwini Deshmukh i/b Mr. Devang Deshmukh, Advocate for respondents
Mr. S. V. Dankh, Advocate for respondent Nos. 2 & 3

CORAM : R. M. JOSHI, J.
DATE : 27th January, 2025

PER COURT :-

1. This appeal under Section 100 of the Code of Civil Procedure takes exception to the judgment and order dated 17.12.1987 passed by First Appellate Court in Regular Civil Appeal No.163/1982 whereby the judgment and decree passed in Regular Civil Suit No. 29/1976 came to be reversed.

2. Undisputedly, plaintiff/appellant filed suit for marshaling i.e.,

for the satisfaction of the loan obtained by defendant No. 2 there shall be sale of property bearing No.7E first instead of sale of property bearing No.42/AA, purchased by him from defendant No.2. The suit came to be decreed. First Appellate Court however reversed the said judgment and decree and dismissed suit filed by plaintiff.

3. At the outset, learned counsel Mr Dankh appearing on behalf of respondent Nos. 2 and 3 (Bank), on instructions, makes statement that loan obtained by defendant No. 2 Gyanoba Bhimrao Shinde has been paid of completely. He placed on record photo copy of "No Dues Certificate" by the Manager, Latur Sahakari Krushi Gramin Bahu-uddeshiya Vikas Bank, Ltd (Previously known as Maharashtra State Co-operative Land Mortgage Bank, Ltd, Sub-branch, Udgir). The said certificate is taken on record and marked as "X" for identification. In view of the said certificate, it is now admitted position for the defendant No. 2, does own any amount to the Bank and there is no question of recovery of any amount by effecting the sale of subject properties.

4. The repayment of loan by defendant No.2 and there being no question of sale of subject properties, is a subsequent event of fact, which has material bearing on the rights of parties. Thus, there is no impediment in considering the same.

5. The basic filing of suit was the loan amount sought to be recovered by the bank from defendant No.2 and for that purpose there would be sale of subject properties, since there was mortgage executed by defendant No. 2 as a security for repayment thereof. Since now nothing is due from defendant No.2, cause of action for filing suit for marshaling does not survive. In view of the change in circumstances, since no cause of action survives for the plaintiff to file suit, suit deserves to be disposed of. Consequently, judgment and decree impugned i.e. passed in Regular civil Appeal No. 163/1982 also stands set aside. Needless to say that all observations made by the First Appellate Court do not survive and they are specifically set aside.

6. In view of the above, nothing survives in the suit, as a result of this, suit is disposed of.

7. Appeal stands disposed of in above terms. No order as to cost.

(R. M. JOSHI, J.)

bsj