



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

SECOND APPEAL NO.23/2009

APPELLANT :

Original
Defendant
On R.A.

Pralhad S/o Narayan Nimkarde,
Aged about 70 Years, Occupation : Agriculturist,
R/o Nandura, Taluka Nandura, District
Buldhana.

(Dead) through L.Rs.

Smt. Bhimabai Pralhad Nimkarde
Aged 69 years, Occ. Household,
R/o Nandura, Tq. Nandura, District
Buldana.

Dead through L.Rs.

(Amended as per Court's order
dated 28.09.2012)

L.Rs. of Appellant

Nivrutti Shankar Nimkarde
Aged 63 years, R/o Nandura,
Distt. Buldana.

(Amendment carried out as per Court's order
dated 16.07.2024)

...VERSUS...

RESPONDENTS :

Original
Plaintiffs
on R.A.

1. Smt. Gayabai Wd/o Dnyandev
Wavatalikar,
Aged about 60 years, Occupation :
Household affairs. (Dead)
2. Nivrutti S/o Dnyandev Wavatalikar,
Aged about 39 years,
Occupation : Not known.
3. Sopan S/o Dnyandev Wavatalikar,
Aged about 33 years, Occupation :
Not known.

4. Lilabai D/o Dnyandev Wavatalikar,
Aged about 32 years,
Occupation : Not known.
5. Muktabai D/o Dnyandev Wavatalikar,
Aged about 30 years, Occupation :
Not known.
6. Eknath S/o Dnyandev Wavatalikar,
Aged about 28 years, Occupation :
Not known.

Nos.1 to 6 r/o Nandura,
Taluka Nandura, District : Buldana.

7. Pushpabai Laxman Zambre,
Aged Adult, Occupation Agriculturist,
R/o : Nandura Khot, Taluka Nandura,
District Buldhana.

Mrs. R.D. Raskar, Advocate for appellant
Mr. O.Y. Kashid, Advocate for respondent Nos.2 to 4

CORAM : ROHIT W. JOSHI, J.

DATE : 10/12/2025

ORAL JUDGMENT :

1. The present second appeal was admitted vide order dated 07/09/2009 on the following substantial question of law :-

“Whether the first appellate court failed to consider the directions of the High Court in respect of the reappreciation of the evidence with regard to the transaction being money lending and to record his own findings on that instead of quoting the findings recorded by the trial court ?”

2. This is the second round of litigation. In the first round, this Court had vide judgment dated 28/08/2008 remitted the matter back to the learned first Appellate Court to decide the appeal afresh by independently dealing with evidence on record. After remand of the appeal, the learned first Appellate Court has decided the appeal vide impugned judgment and decree dated 19/11/2008, confirming the judgment and decree passed by the learned Trial Court. The original defendant has preferred the present second appeal, challenging the judgment and decree passed by the learned first Appellate Court.

3. Perusal of substantial question of law will indicate that the same pertains to failure on the part of learned first Appellate Court in re-appreciating the evidence and deciding the controversy independently as per directions issued vide earlier judgment passed by this Court in Second Appeal No.439/1996.

4. Mrs. Raskar, learned Advocate for the appellant contends that even after appeal was remanded with specific direction to appreciate the evidence afresh and record findings of fact of the case and decide the same in accordance with law, the learned first Appellate Court has once again merely extracted certain paragraphs from the judgment of the learned Trial Court and has broadly recorded its

concurrence with the said findings without appreciating the evidence on record. Learned Advocate has referred to the deposition of witnesses, particularly relating to the defence of the agreement of sale being a mere camouflage for hand loan and contends that the said oral evidence is not considered at all by the learned first Appellate Court. She has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *U. Manjunath Roa Vs. U. Chandrashekhar and another*, reported in *AIR 2017 (SC) 3591*, particularly paragraph 12 thereof. The relevant portion from the said judgment, on which the learned Advocate has placed emphasis, is reproduced herein below :-

“12.However, while stating the law, the Court has opined that expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage to be adopted by the appellate court for shirking the duty cast on it. We are disposed to think, the expression of the said opinion has to be understood in proper perspective. By no stretch of imagination it can be stated that the first appellate court can quote passages from the trial court judgment and thereafter pen few lines and express the view that there is no reason to differ with the trial Court judgment. That is not the statement of law expressed by the Court. The statement of law made in Santosh Hazari (supra) has to be borne in mind.”

5. Per contra, Mr. Kashid, learned Advocate for the respondents Nos.2 to 4 would contend that the learned first Appellate

Court has dealt with the evidence on record. He points out that the defence of the defendant was based on three documents at Exhs.63, 64 and 66. He contends that the said documents have been considered by the learned first Appellate Court and upon appreciation of the said documentary evidence, the learned first Appellate Court has discarded the defence set up by the defendant/appellant. Mr. Kashid states that merely because certain paragraphs from the judgment of learned Trial Court are reproduced in the appellate judgment would not mean that the learned Appellate Court has not independently assessed the evidence on record.

6. Perusal of the judgment by the learned first Appellate Court will indicate that the learned first Appellate Court has elaborately quoted paragraphs from the judgment of the learned Trial Court and has recorded its concurrence with the findings recorded by the learned Trial Court. While doing so, brief reasons are also recorded by the learned first Appellate Court. The learned first Appellate Court has also referred to the aforesaid three exhibits, which are foundation of the defence of defendants that transaction was in fact a loan transaction. However, perusal of the judgment will indicate that the oral evidence led by the parties with respect to said documents and also in relation to agreement in question is not independently dealt with and assessed by the learned

first Appellate Court. The learned first Appellate Court has not considered the oral evidence at all.

7. Having perused the judgment delivered by the learned first Appellate Court, I am in agreement with the learned Advocate for the appellant that the learned first Appellate Court has failed to independently reappreciate the entire evidence on record in order to arrive at findings of fact, which is an essential judicial function of the learned first Appellate Court as a final Court of facts. The ratio of the judgment in the matter of *U. Manjunath Roa* (supra) relied upon by the learned Advocate for the appellant is squarely applicable to the case.

8. In view of the above, second appeal is partly allowed in the following terms :-

(A) Appellate judgment and decree dated 19/11/2008 passed by the District Judge-I, Khamgaon in Regular Civil Appeal No.4/1986 is set aside. Regular Civil Appeal No.4/1986 is remanded to the learned first Appellate Court for deciding it afresh.

(B) Parties shall appear before the learned first Appellate Court on 05/01/2026, for which separate notice will not be issued. Since the appeal is of the year 1986 and the parties are litigating since

the year 1982, learned first Appellate Court is requested to decide the appeal as early as possible and in any case before 30/04/2026.

(C) Office to ensure that record and proceedings are remitted to the learned first Appellate Court before 05/01/2026.

(D) Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

Wadkar