Ajit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 185 OF 2026

Bharat Chatrabhuj Naik ...Appellant
Versus
Ranoji Chatrabhuj Naik ...Respondent

WITH
INTERIM APPLICATION NO. 2929 OF 2026
IN
SECOND APPEAL NO. 185 OF 2026

Mr. Raviraj S. Gamare, for the Appellant.

CORAM: N. J. JAMADAR, J.
DATE : 22nd APRIL 2026

P.C.:

1. Heard the learned counsel for the Appellant.

2. This Second Appeal is directed against the judgment and decree dated 20th December 2025, passed by the learned District Judge, Malegaon, whereby the appeal preferred by the Respondent/Plaintiff against the decree dated 8th March 2021, passed by the Trial Court in R.C.S. No.29 of 2005 came to be set aside, and a decree of redemption of the mortgage came to be passed.

3. The learned counsel for the Appellant submitted that the learned District Judge committed an error in allowing the appeal without properly construing the recitals of the instrument dated 8th November 2005, titled "conditional sale deed for five years".

4. It was submitted that the Plaintiff had sold the property under the said instrument for a consideration of Rs.1,70,000/- on the condition of reconveyance upon repayment of the said amount within a period of five years. The Plaintiff failed to repay the said amount. Therefore, the sale became absolute. The Trial Court had, thus, rightly dismissed the Suit, and the Appellate Court was in error in allowing the appeal, and passing the decree for redemption of mortgage.

5. I have perused the recitals in the instrument dated 8th November 2005. There is a reference to the debt, in the sense that, the Plaintiff had obtained a sum of Rs.1,70,000/- from the Defendant/Appellant, as he was in financial constraints. The amount was agreed to be repaid after two years and within five years of the execution of the said instrument and, thereupon, the transaction was to be treated as reversed. In the event, the Plaintiff failed to repay the said amount, the Defendant/Transferee was to approach the Civil Court and get a decree on the premise that the amount paid under the said instrument should be treated as the consideration, and, after payment of the requisite stamp duty thereon, get the sale deed executed from the Court.

6. The aforesaid stipulations in the instrument dated 8th November 2021, make it abundantly clear that all the classical requirements of a mortgage by conditional sale obtained in the case at hand: (i) the condition of repurchase is embodied in the document that purports to effect the sale, (ii) the debt subsists, (iii) the relationship of the debtor and creditor was to exist until either of the parties approached the Civil Court and obtained either a decree for specific performance of the contract of sale or redemption of the mortgage, iv) there are no express stipulations in the instrument which show a contrary intention, (v) the debt subsists and the right to redeem remains with the Plaintiff, (vi) the instrument is conspicuously silent about the incidents of absolute ownership which are associated with an outright sale, and (vii) there is no recital as to absolute transfer of ownership to the Defendant.

7. All these factors lead to an irresistible inference of a mortgage by conditional sale. The essential ingredients of a mortgage by conditional sale, as laid down in the decision of the Supreme Court in the case of **Pandit Chunchun Jha v. Sheikh Ebadat Ali & Anr.**[1] and the line of decisions that follow the said judgment, are made out in the instant case.

8. In the aforesaid view of the matter, no substantial question of law arises for consideration.

9. The appeal stands dismissed.

10. In view of the dismissal of the Second Appeal, the pending Interim Application also stands disposed.

[N. J. JAMADAR, J.]

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1 (1954) 1 Supreme Court Cases 699