2026:BHC-NAG:3679

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

SECOND APPEAL NO. 326 OF 2024

(DEORAO S/O ANANDRAO PAWAR VS DILIP S/O VASANT KUKADE)

Office Notes, Office Memorandum of Coram, appearances, Court's orders or the directions, and Registrar's orders.	*Court's or Judge's order*

Mr. V. S. Kukday, Advocate for appellant.
Mr. S. V. Bhutada and Mr. Y. J. Maheshwari, Advocates for respondent.

CORAM : ROHIT W. JOSHI, J.
DATED : FEBRUARY 27, 2026

1) Vide order dated 19/12/2024 following substantial questions of law were framed in the present appeal.

> *(i) Whether the sale deed in question is void when the purchaser has not paid entire consideration to the vendor and it was executed by fraud and misrepresentation ?*
>
> *(ii) Whether the agreement of sale executed by Power of Attorney without any authority to sell and in absence of the registered Power of Attorney ?*

2) The appellant in the present appeal is the original plaintiff. He has filed the suit against the defendant seeking cancellation of registered sale deed dated 28/12/1998 executed by him in favour of the defendant. The said suit was decreed by the learned 7th Joint Civil Judge, Senior Division, Nagpur vide judgment and decree dated 01/04/2008. Aggrieved by the said judgment and decree, the respondent who is the original defendant preferred first appeal being R.C.A.No.237/2012. The said appeal came to be allowed by the learned District Judge-3 Nagpur vide judgment and decree dated 20/08/2024. This reversing judgment and decree by the first appellate Court is subject matter of challenge in the present second appeal.

3) The plaintiff was owner of the suit property. Plaintiff's maternal aunt Sarubai Pawar had sold the suit property to one Pramod Agrawal and others vide registered sale deed dated 21/03/1983, claiming that the plaintiff was not seen or heard about for long and as such, he had died a civil death and upon his demise she had become absolute owner of the suit property. The plaintiff challenged the said sale deed by filing a suit which came to be registered as Spl.C.S.No.102/1992. The parties arrived at amicable settlement, in terms whereof the plaintiff agreed to pay sum of Rs.1,75,000/- to the purchasers i.e. Pramod Agrawal and others in lieu of cancellation of sale deed. The said sale deed came to be cancelled upon payment of Rs.1,75,000/- to Mr.Pramod Agrawal and others. The compromise decree came to be passed on 01/07/1997. Prior to this on 18/06/1997, the plaintiff had entered into an agreement of sale with one Mr.Chawre and Dr.Babhulkar inter alia agreeing to sell the suit property for a consideration of Rs.8 Lakhs. It is not in dispute that simultaneously a Power of Attorney was also executed by the plaintiff in favour of Mr.Chawre. However, under the said Power of Attorney right to alienate the property was not given to Mr.Chawre. Thereafter, the impugned sale deed dated 28/12/1998 came to be executed by the plaintiff in favour of defendant for a consideration of Rs.8 Lakhs.

4) The plaintiff has filed a civil suit challenging the sale deed dated 28/02/1998 inter alia on the ground that he did not received sale consideration, except an amount of Rs.2 Lakhs and that the transaction was a loan transaction. It is case of the plaintiff that this amount of Rs.2 Lakhs was required by him to evict the tenants from the suit property. The plaintiff has contended that he had agreed to refund the said amount of Rs.2 Lakhs to the defendant with interest @6% p.a. within a period of

six months and as such the said transaction was not a genuine sale transaction but in essence a loan transaction. The plaintiff has contended that although out of the total sale consideration amount Rs.5 Lakhs is shown to be received under the sale deed, a sum of Rs.3 Lakhs was immediately transferred to the account of defendant. He contends that a sum of Rs.3 Lakhs was withdrawn by the defendant himself. The balance amount of Rs.3 Lakhs is paid directly to Dr.Babhulkar with whom the plaintiff had entered into an agreement of sale. It is the contention of the plaintiff that the amount of Rs.3 Lakhs which is shown to be paid to him under the earlier agreement dated 18/06/1997 executed in favour of Mr.Chawre and Dr.Babhulkar was entirely appropriated by Mr.Chawre.

5) It will be pertinent to state that the agreement of sale dated 18/06/1997 is not under challenge and Mr.Chawre and Dr.Babhulkar are also not parties to the civil suit. The learned trial Court has decreed the suit on the ground that the Power of Attorney executed by plaintiff in favour of Mr.Chawre did not confer any authority upon him to alienate the property and therefore, the sale deed executed pursuant to the said agreement entered into by Mr.Chawre will not be a valid sale deed.

6) As stated above, the defendant challenged the said decree by filing R.C.A. No.237/2012. The first appellate Court has allowed the appeal holding that the impugned sale deed dated 28/12/1998 is executed by the plaintiff himself in favour of the defendant. The contention of the plaintiff that the transaction was a loan transaction is rejected in view of the contents of the registered sale deed. As regards the payment of Rs.3 Lakhs to the defendant out of the amount of Rs.5 Lakhs paid by him to the plaintiff in terms of sale deed, the learned first appellate Court has observed that the suit property was occupied

by tenants as on the date of sale deed and that the parties had agreed that amount of Rs.3 Lakhs will be paid by the defendant/purchaser to plaintiff/vendor on getting vacant possession of the suit property and therefore, this amount of Rs.3 Lakhs was retained by the defendant towards the security.

7) The contention that sale deed is not valid since it is executed on the basis of an agreement of sale executed by a constituted attorney who was not authorised to alienate the property, is liable to be rejected since the sale deed is executed by the plaintiff himself. It is not the case that the constituted attorney has executed the sale deed acting for and on behalf of the plaintiff. Since the plaintiff has himself executed the sale deed the question of cancellation of the same on the ground that prior agreement pursuant to which sale deed was executed was entered into by a person not having authority to do so, does not arise. The second substantial question of law is therefore, answered in favour of the respondent/defendant and against the appellant/plaintiff.

8) The first substantial question of law in fact incorporates two questions, first as to whether the sale deed is void on the ground that defendant(purchaser) has not paid the entire sale consideration to the plaintiff(vendor) and second whether the sale deed was got executed by practising fraud or under misrepresentation.

9) It is well settled that mere failure to make payment of entire sale consideration cannot be a ground for setting aside a sale deed. A transaction of sale deed is complete upon registration of the sale deed on results in immediate transfer of the property from the vendor to purchaser. This of course, is subject to the contract to the contrary between the parties.

However, in the present case, the sale deed does not contain any stipulation that failure on the part of the purchaser to pay the entire sale consideration will result in cancellation of the sale deed. The sale deed cannot be cancelled merely on the ground that the vendor has not received the entire sale consideration.

10) However, it must be stated that the learned first appellate Court has recorded findings that out of the agreed sale consideration of Rs.8 Lakhs, the plaintiff(vendor) has admittedly received an amount of Rs.2 Lakhs and in addition an amount of Rs.3 Lakhs was proved to be paid by defendant(purchaser) to Dr.Babhulkar with whom the plaintiff(vendor) had entered into agreement of sale before execution of the impugned sale deed. The plaintiff had received amount of Rs.3 Lakhs from Dr.Babhulkar is a finding recorded which is supported by receipt issued by the plaintiff admitting the receipt of Rs.3 Lakhs from Dr.Babhulkar. Apart from this, the learned first appellate Court has also taken into consideration the fact that the plaintiff(vendor) has paid sum of Rs.1,75,000/- to Mr.Pramod Agrawal for cancellation of the sale deed executed by Sarubai in his favour. It is held that the plaintiff has not explained from where he received the amount for payment to Mr.Pramod Agrawal, if he did not receive any amount from Dr.Babhulkar. The learned first appellate Court has held that payment of Rs.3 Lakhs was made by defendant(purchaser) to Dr.Babhulkar and it was to be adjusted against the total sale consideration of Rs.8 Lakhs payable under the impugned sale deed dated 28/12/1998. The version of plaintiff that Mr.Chawre received the entire amount of Rs.3 Lakhs from Dr.Babhulkar cannot be accepted in view of payment admittedly made by plaintiff to Mr.Pramod Agrawal and receipt issued by him acknowledging the payment. Moreover this allegation against Mr.Chawre

cannot be examined, since he is not party to the suit. As regards balance of Rs.3 Lakhs, it is the contention of defendant(purchaser) that the said amount was retained by him towards security and that the sum was to be paid to the plaintiff(vendor) once the tenants were vacated from the suit property and physical possession was delivered to the defendant(purchaser). It is not in dispute that the entire suit property was in occupation of the tenants. It is the case of the plaintiff(vendor) that amount of Rs.2 Lakhs was required by him as a hand loan for making payment to the tenants to get them vacated. The case of defendant (purchaser) that amount of Rs.3 Lakhs was to be paid while taking physical possession of the suit property after get it vacated by tenants is accepted by the learned first appellate Court. The view taken by the learned first appellate Court is a possible view and does not warrant any interference. Thus, the contention of plaintiff(vendor) that he did not receive the entire amount of consideration also cannot be accepted.

11) As regards the case of fraud, the learned advocate for the appellant contended that the sale deed was executed as a security for hand loan of Rs.2 Lakhs and the defendant (purchaser) misrepresented that sale deed was required to be executed merely as security for the loan amount. This is the only allegation of fraud and misrepresentation. In this regard, it must be stated that the plaintiff(vendor) has not come with a consistent stand with respect to circumstances in which sale deed was executed by him. He stated that he had himself approached the defendant(purchaser) for borrowing money pursuant to which, sale deed got executed by defendant(purchaser) as a security for loan amount. Thereafter, he again altered his stand and stated that the amount of Rs.2 Lakhs was received from the

defendant(purchaser) by Mr.Chawre suggesting that Mr. Chawre had approached the defendant(purchaser). It must also be stated that learned first appellate Court referred to admission of the plaintiff in his cross-examination that there were no talks of advancement of loan between the plaintiff and defendant. Thus, the defendant, has failed to establish the case that the real transaction was a loan transaction and sale deed was executed as a security and as such case of fraud and misrepresentation is not proved.

12) It is a settled legal position that in case a party to a document wants to contend that the transaction between the parties is not what is recorded in a written document but something else, the burden of proving the same is on such party. There is a presumption with respect to correctness and genuineness of written document. This presumption stands at a very high pedestal when the document in question is a registered document. A person who intends to dislodge a registered document has to discharge a very heavy burden to prove his case. In such case pleadings must be very precise and must provide not only material facts, but also material particulars as contemplated under Order 6 Rule 4 of the Code of Civil Procedure and the evidence must be absolutely in accordance with the pleadings. The divergent stands that have come to the fore in the cross-examination of the plaintiff(vendor) are sufficient to hold that he failed to discharge the burden of proving that the sale transaction recorded in the impugned sale deed is not a genuine sale transaction but merely a security for a loan transaction. The first substantial question of law, therefore, needs to be answered in favour of the respondent/original defendant and against the appellant/original plaintiff.

13) In the result, the Second Appeal stands dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)