

WHERE A DEED OF SALE HAS BEEN DULY EXECUTED, REGISTERED AND THE PAYMENT OF CONSIDERATION HAS BEEN ENDORSED ON IT, IT WOULD AMOUNT TO A FULL TRANSFER OF OWNERSHIP

INTRODUCTION:

*The Apex Court in a recent decision in **Damodhar Narayan Sawale (D) through LRs. versus Shri Tejrao Bajirao Mhaske and Ors.**¹, observed that there could be no doubt with respect to the position that where a deed of sale had been duly executed and registered and its delivery and payment of consideration was endorsed thereon, it would amount to a full transfer of ownership so as to entitle its purchaser to maintain a suit for possession of the property sold.*

FACTS:

Ramakrishna Ganpat Mhaske ("**Original Defendant No. 1**") and Tejra Bajirao Mhaske ("**Original Defendant No. 2**"), had sold a field situated at Khasra No. 20/2, admeasuring 3 Acres and 20 Guntas in village Gangalgaon, Taluk Chikhli, District Buldana ("**Suit Field**") to Damodhar Narayan Sawale (D) ("**the Plaintiff**"), under a registered sale deed dated 21st April, 1979.

On the execution of the sale deed, the Plaintiff was put in possession of the Suit Field.

On 25th April, 1979, the Original Defendant No. 2 started disturbing the possession of the Plaintiff in the Suit Field.

A Suit was filed on 21st May, 1979, wherein it was contended that the Original Defendant No. 2 had utilized the sale consideration received for various purposes, including to pay debts.

The Original Defendant No. 1 filed a written statement endorsing the claim and contentions of the Plaintiff and stated therein that after

executing the sale deed, the Original Defendant No. 1 and the Original Defendant No. 2 parted with the possession of the Suit Field, however the Original Defendant No. 2 turned dishonest and started disturbing the possession of the Plaintiff over the Suit Field.

The Original Defendant No. 2 defended the Suit inter alia contending that the sale deed dated 21st April, 1979, was a sham document and was never intended to be acted upon. It was further contended that the execution of the sale deed was nothing but a collateral security to a money lending transaction viz., for a loan of Rs.1000/- with a promise to re-pay an amount of Rs.1500/- within 12 months.

The Trial Court inter alia observed that the sale deed was a sham document and it was executed only as a security for a money lending transaction and consequently, dismissed the Suit with costs.

Being aggrieved by the order of the Trial Court, the Plaintiff preferred Regular Civil Appeal No.98

¹ Civil Appeal No.930 of 2023

of 1987, before the Court of Additional District Judge, Buldana (“**the First Appellate Court**”).

The First Appellate Court allowed the appeal by setting aside the judgment and decree of the Trial Court and inter alia observed that the Original Defendant No. 2 had failed to prove that the sale transaction was an outcome of money lending transaction and that the sale deed was nominal in nature.

The Original Defendant No. 2, being aggrieved with the order of the First Appellate Court preferred Second Appeal No. 435 of 1995, before the Bombay High Court, Nagpur Bench.

The Bombay High Court allowed the Second Appeal vide order dated 30th October, 2015 (“**Impugned Order**”). Being aggrieved by the Impugned Order, the Plaintiff preferred the present Appeal.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Apex Court was as follows:

Whether the Original Defendant No. 2 had executed a sale deed in favour of the Plaintiff under which the Plaintiff became owner of the Suit Field?

JUDGMENT:

The Apex Court observed that the sale deed was a registered document, the execution of which was admitted by both the Original Defendant No. 1 and the Original Defendant No. 2.

The Apex Court observed that the High Court did not consider the legal impact and effect of the registered sale deed, while reversing the judgment of the First Appellate Court.

Similarly, the Apex Court also observed that a perusal of the order of the Trial Court would reveal indubitably that despite the admission of

the execution and registration of the sale deed by the Original Defendant No. 2 in favour of the Plaintiff, the Trial Court had failed to consider the legal effect and impact of execution and registration of the sale deed in view of the provisions under the Transfer of Property Act, 1882, and the Registration Act, 1908, and sans such consideration accepted the Original Defendant No. 2’s contention that it was a sham document.

The Apex Court observed that there could be no doubt with respect to the position that where a deed of sale had been duly executed and registered, its delivery and payment of consideration had been endorsed thereon, it would amount to a full transfer of ownership so as to entitle its purchaser to maintain a suit for possession for the property sold. The very object of the mandate for registration of transfer of an immovable property worth more than Rs. 100/- under Section 54 of the Transfer of Property Act, 1882, read with Section 17 of the Indian Registration Act, was primarily to give certainty to title.

The Apex Court observed that there could be no reason to disbelieve a recital contained in a registered sale deed regarding payment of consideration, executed by the vendor, however neither the registered sale deed nor its execution were in dispute, it must carry a presumption that the transaction was a genuine one. The dispute was only in regard to the nature of transaction.

The Apex Court further observed that being a registered sale deed containing stipulations of transfer of right, title and interest in favour of the Plaintiff on the Suit Field and also recital regarding receipt of sale consideration, the burden was entirely on the Original Defendant No. 2 to establish otherwise and to prove that it did not reflect the true nature of transaction.

It was to be noted that by virtue of Section 54, of the Transfer of Property Act and Section 17 of the Registration Act, since the immovable property was worth more than Rs. 100/-, a sale deed was reduced in writing and registered. The intention of the parties was also reflected specifically in the sale deed and nothing reflecting a contrary intention to not pass the title and ownership was present even impliedly therein. Taking consideration of the surrounding circumstances and the conduct of parties in deciding the passing of title would arise only if the recitals in the document were indecisive and ambiguous. The oral evidence of the Original Defendant No. 2 could not override the registered sale deed.

In view of the above observations, the Apex Court allowed the Appeal and set aside the impugned order dated 30th October, 2015, passed by the High Court, and restored the order of the Court of Additional District Judge, Buldana in Regular Civil Appeal No. 98 of 1987.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.