

# SUPREME COURT OF INDIA

Vijya Kumar

Vs.

Sukhdev

C.A.No.3039 of 2008

(Tarun Chatterjee and H.S.Bedi JJ.)

29.04.2008

## JUDGMENT

**Tarun Chatterjee, J.**

1. Leave granted.

2. The plaintiff in a suit for recovery of possession of agricultural land as fully described in the plaint [hereinafter referred to as "the suit land"] is the appellant before us. The plaintiff/appellant instituted the suit for recovery of possession of the suit land on the basis of a sale deed dated 13th of July, 1992 executed by the defendant/respondent in his favour. The respondent, however, in his written statement raised the plea that the transaction in question was not out and out sale but it was a loan in substance. The trial court decreed the suit holding that the transaction was an out and out sale.

3. In appeal, the Appellate Court, however, reversed the judgment of the trial court and dismissed the suit. Feeling aggrieved, the plaintiff/appellant filed a Second Appeal in the High Court of Judicature of Bombay at Nagpur Bench, which also affirmed the judgment of the appellate court. The plaintiff/appellant, feeling aggrieved by the decision of the High Court in the Second Appeal, has filed a Special Leave Petition, which on grant of leave, was heard in presence of the learned counsel for the parties.

4. We have heard the learned counsel for the parties and examined the judgment under appeal as well as the judgment of the appellate court and the trial Court. After having examined the judgment of the High Court, judgments of the courts below and other materials including oral and documentary evidence on record, we are of the view that while affirming the findings of the appellate court on the question whether the transaction was a loan in substance or an out and out sale, the High Court had failed to notice the material evidence on record. The High Court affirmed the finding of the appellate court only on the basis that the trial court had ignored the entries of the revenue record to the effect that the mother of the respondent Gangubai was the co-owner of the suit land and since Gangubai did not execute the sale deed in favour of the plaintiff/appellant and had not been joined as a party to the suit,

the suit filed by the plaintiff/appellant on the basis of the Sale Deed in which Gangubai was not one of the executants would not be held to be maintainable. However, the only question that was raised in the suit was whether the transaction in question was an out and out sale or a loan in substance in which, in our view, the revenue record in respect of the suit land was not material to be considered. From the perusal of the record, we find that the respondent himself had admitted in the evidence before the trial court that he had himself gone to the office of the Registrar and registered the sale deed in favour of the plaintiff/appellant. We also find from the record that the High Court had failed to notice that the respondent sold the suit land in the capacity of Karta (Manager) of the Joint Family and for fulfilling the needs of the Joint Family. That apart, the High Court had failed to notice that even assuming that the mother was a co-owner of the suit land, even then, the entire suit could not be dismissed as the plaintiff/appellant had purchased from the respondent who is admittedly a co-owner of the suit land. Be that as it may, since the High Court had not considered the materials on record, including the oral and documentary evidence, we are of the view that the High Court was not justified in affirming the judgment of the appellate court without taking into consideration the above aspect of the matter and also the oral and documentary evidence adduced by the parties to prove that the transaction in question was an out and out sale and not a loan in substance.

5. For the reasons aforesaid, we set aside the judgment of the High Court and the appeal is sent back to the High Court for decision afresh in accordance with law after framing the substantial question of law. The appeal is thus allowed to the extent indicated above. It is expected that the High Court shall decide the second appeal within a period of six months from the date of supply of a copy of this order to it. There will be no order as to costs.