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**(2013) 12 MP CK 0027**  
**In the Madhya Pradesh High Court**  
**Case No : S.A. No. 767 of 2013**

Jodhan Singh and Others

APPELLANT

Vs

Keshav Prasad Sharma and Others

RESPONDENT

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**Date of Decision :** 18-12-2013

**Acts Referred:**

**Citation :** (2013) 12 MP CK 0027

**Hon'ble Judges :** R.S. Jha, J

**Bench :** Single Bench

**Advocate :** Ashish Shroti, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

R.S. Jha, J.—Heard. The appellants have filed this appeal being aggrieved by the judgment and decree dated 29.6.2013 passed by the First Additional District Judge, Damoh in Civil Appeal No. 13-A/2013, whereby the judgment and decree dated 17.8.2012 passed by the Second Civil Judge Class-I Damoh in Civil Suit No. 23-A/2010 has been affirmed and confirmed and the suit filed by the appellants/plaintiffs for declaration and permanent injunction has been dismissed.

2. The brief facts, leading to the filing of the present appeal, are that the appellants had executed a sale deed for Khasra Nos. 577, 578 and 579 admeasuring total area 0.52 Hectares situated in Village Jalhari, Tehsil Jabera, District Damoh, in favour of the respondent on 8.4.1996. It is submitted by the appellant that the aforesaid sale deed was in fact not an absolute sale and was infact a loan transaction which was not to be acted upon and the sale deed was executed as security for the loan. It is submitted that alongwith the said sale deed another agreement Exhibit P-2 was executed between the parties on the same date in which it was stated that in case the appellants return a sum of Rs. 16,000/- in place of Rs. 8,000/- to the defendant within six months from 8.4.2006, the property would be reconveyed to the appellant. It is submitted that the appellant returned the amount within the stipulated time but the

respondent/defendant did not reconvey the property on account of which a notice was issued by the appellants/plaintiffs to the respondent/defendant in the year 2006 which was replied to by the respondent/defendant on 16.8.2006 refusing to reconvey the property. It is submitted that the aforesaid refusal has given rise to filing of the present suit, but the suit has been wrongly dismissed by the court below by recording a finding that the suit was barred by limitation and that the appellants/plaintiffs did not repay and return the amount as stipulated in the agreement and, therefore, they had no right to reconvey the same. The court below has also held that the sale was not a loan transaction but was an absolute sale.

3. The learned counsel for the appellants submits that a mere reading of Exhibit P-2, the agreement clearly establishes that the sale was not an absolute sale but a loan transaction and that it was executed as security for return of the loan and that the agreement of the same date for reconvening and return of Rs. 16,000/- clearly establishes the above fact. It is submitted that the court below has failed to take into consideration the oral and documentary evidence in this regard and, therefore, committed perversity. It is further submitted that the cause of action in the instant case arose when the defendant refused to reconvey the property by their reply dated 16.8.2006 and, therefore, the finding recorded by the court below regarding limitation is also perverse and contrary to the documentary evidence on record.

4. Having heard the learned counsel for the appellants, it is observed that the sale deed was executed on 8.4.96 and the agreement, if any, was executed on the same date requires reconvening within six months. The court below after going through the aforesaid document has clearly held that the limitation for filing the suit commenced after a lapse of six months and as the suit filed by the appellants/plaintiffs was filed in the year 2006 i.e. after a lapse of nearly 10 years, it was barred by limitation. The aforesaid finding recorded by the court below is based on oral and documentary evidence on record and does not suffer from any perversity or material irregularity.

5. As far as the other issue raised by the appellants/plaintiffs is concerned, the court on analysis of the evidence on record has clearly held and recorded a finding to the effect that the appellants did not act upon the agreement and repay the amount and in such circumstances the facts indicates that the sale was absolute and not of security for any loan extended by the defendant. The aforesaid finding is also based on appreciation of oral and documentary evidence on record and does not suffer from any perversity or material irregularity.

6. The findings against the appellants are concurrent and do not give rise to any substantial question of law. The appeal filed by the appellants being merit less is, accordingly, dismissed.