

(2015) 10 BOM CK 0163
In the Bombay High Court
Case No : Second Appeal No. 435 of 1995

Tejrao Bajirao Mhaske

APPELLANT

Vs

Damodhar Narayan Sawale and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Bombay Money Lenders Act, 1946 — Section 10
Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 8AA
Criminal Procedure Code, 1973 (CrPC) — Section 107

Citation : (2015) 10 BOM CK 0163

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : O.W. Gupta, Advocate, for the Appellant; J.J. Chandurkar, Advocate,
for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—The Trial Court dismissed Regular Civil Suit No. 257 of 1985 on 31-7-1987 for possession of Survey No. 20/2 on the basis of the sale-deed dated 21-4-1979 at Exhibit 128, recording the finding that the plaintiff has failed to prove that he has purchased the suit field from the defendants. The Trial Court held that the defendant No. 2 has established that the sale-deed at Exhibit 128 was nominal and executed by way of collateral security for money lending transaction. The Trial Court further held that in the absence of permission of the District Collector, as required by the provision of Section 8 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the sale at Exhibit 128 is void.

2. The lower Appellate Court has reversed the decision of the Trial Court, in Regular Civil Appeal No. 98 of 1987 by its judgment and order dated 31-7-1995. It is held that the defendant No. 1 has admitted the claim of plaintiff and the plaintiff has established that the defendant No. 2 has executed the sale-deed at Exhibit 128 in his favour and the plaintiff has become owner of the suit property

by virtue of it. It has further recorded the finding that the defendant No. 2 has failed to establish that the sale-deed at Exhibit 128 was a nominal document and was executed by way of collateral security for money lending transaction. It has held that the plaintiff has established his entitlement for possession over the suit property. Consequently, it has set aside the dismissal of the suit and passed a decree for possession in favour of the plaintiff.

3. After hearing the learned counsels appearing for the parties at length and after going through the findings recorded by the Courts below and the documents placed on record, the following substantial questions of law were re-framed by this Court on 15-10-2015 as under :

"[1] Whether the plaintiff has established his entitlement for a decree of possession of the suit property on the basis of the sale deed dated 21.04.1979 at Exh.128 executed by the defendant Nos. 1 and 2?

[2] Whether the defendant No. 2 has established that the sale deed at Exh.128 was nominal and by way of collateral security and the said transaction was hit by the provisions of Section 8 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act?

[3] While reversing the findings recorded by the trial Court, whether the lower appellate Court has ignored the findings recorded by the trial Court on the material facts in the light of undisputed factual position?"

Thereafter, the matter was adjourned to enable the parties to address this Court on the aforesaid substantial questions of law.

4. The facts in detail are as under :

The suit property consists of 3 acres and 20 gunthas (1 hectare and 42 acres) of land in Survey No. 20/2 situated at Village Gangalgaon, Tahsil Chikhli, District Buldana. The plaintiff came forward with a case that he has purchased the suit property by the registered sale-deed dated 21-4-1979 for a total consideration of Rs. 10,000/- from the defendant Nos. 1 and 2 and was accordingly put in possession of the same also. The plaint alleges that the defendant No. 2-Tejrao Bajirao Mhaske was the sole coparcener and the karta of the joint family. The defendant No. 2 was in need of money for repayment of debts and for maintenance of his family and, therefore, he sold the land admeasuring 2 acres and 20 gunthas from the suit property to the defendant No. 1 by the registered sale-deed dated 4-7-1978. The defendant No. 1 became the owner and in possession of 2 acres and 20 gunthas of land and the defendant No. 2 remained the owner and in possession of one acre of land in Survey No. 20/2, the suit property.

5. The plaint alleges that in order to discharge his debts, the defendant No. 2 sold one acre of land out of Survey No. 20/2, whereas the defendant No. 1 sold 2.20 gunthas of land to the plaintiff for a total consideration of Rs. 10,000/- by a registered sale-deed dated 21-4-1979. An amount of Rs. 3,000/- was paid to the

defendant No. 2 for discharge of his debts, which he had incurred and the balance consideration of Rs. 7,000/- was paid to the defendant No. 1. The sale of the suit land was for the benefit of joint family and, therefore, it is binding upon the sons of the defendant No. 2. The defendant No. 2 started obstructing the possession of the plaintiff over the suit land on 25-4-1979 and, therefore, the suit was filed on 21-5-1979 initially for grant of permanent injunction restraining the defendants from interfering with the possession of the plaintiff over the suit property. The application for grant of temporary injunction was rejected by the Trial Court, holding that the plaintiff has failed to establish his possession over the suit property. The plaintiff by filing an application for amendment at Exhibit 37 dated 10-3-1980 claimed the relief of possession on the basis of dispossession on 26-4-1979 and 18-6-1979, which was granted on 19-8-1980.

6. The defendant No. 1 appeared and filed his written statement at Exhibit 34 admitting the entire claim of the plaintiff and supporting him. The defendant No. 2, however, resisted the claim of the plaintiff, by filing written statement at Exhibit 35 alleging that the transaction dated 21-4-1979 was a money lending transaction by way of collateral security and the possession of the suit property was never handed over to the plaintiff. It was also the stand taken that the sale of the land to the defendant No. 1 to the extent of 2 acres and 20 gunthas was also nominal and by way of security for the loan transaction. It was the defence raised that the suit property was the ancestral property in which all the coparceners, including minors, have share in it. The share of minor could not have been sold without the permission of the District Court. The defendant No. 2 admitted the receipt of consideration of Rs. 3,000/- for sale of one acre of land out of the suit property to the plaintiff and showed his readiness and willingness to deliver the possession of it. It was also the defence raised that the sale on 21-4-1979 was hit by Section 8 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act and the transaction was money lending without licence and in violation of Section 10 of the Bombay Money Lenders Act.

7. Plaintiff Damodar Salwe entered the witness-box and deposed at Exhibit 105. He also examined PW 1 Patilbuwa Laxman, an attesting witness to the sale-deed dated 21-4-1979 at Exhibit 128. The plaintiff produced on record the sale instances at Exhibits 106, 107 and 108 and his bank pass book at Exhibit 109. The certified copy of the sale-deed dated 23-4-1979 was marked as Exhibit 110. The plaintiff also filed the receipt of discharge of loan by the defendant No. 2 on 23-4-1979 itself at Exhibit 111 and the certificate at Exhibit 112. The plaintiff also filed the notice dated 27-4-1979 at Exhibit 113 issued by the defendant No. 2 and the index for sale of the land on 5-11-1979 at Exhibits 114, 115 and 166. He also filed the sale-deed at Exhibit 117 executed by him in favour of the defendant No. 2 for a total consideration of Rs. 4,000/-.

8. Defendant No. 1 Ramkrushna entered the witness-box and deposed that the sale-deed dated 21-4-1979 at Exhibit 128 was executed by himself and the defendant No. 2 in favour of the plaintiff for a total consideration of Rs. 10,000/-

and the possession of the suit property was also handed over. He admitted that he received the consideration of Rs. 7,000/- and the defendant No. 2 was paid an amount of Rs. 3,000/-. He admitted that the contents of the sale-deed at Exhibit 128 were written at his instance and at the instance of the defendant No. 2, but expressed that he does not know whether the defendant No. 2 can read and write. In the cross-examination, he stated that he had purchased 21/2 acres of land from Survey No. 20/2 from the defendant No. 2, but he did not apply for mutation to the revenue officers. He denied that the sale-deed executed by the defendant No. 2 in his favour was nominal.

9. Defendant No. 2 Tejrao entered the witness-box and deposed that he was in need of money and, therefore, borrowed an amount of Rs. 1,000/- from the plaintiff with an understanding that an amount of Rs. 1,500/- shall be refunded to the plaintiff. At that time, the plaintiff obtained the thumb impressions on the blank papers saying that it would be used for writing the atak patra as a security for repayment of Rs. 1,500/-. He deposed that he does not know reading and writing. He deposed that the suit field was the ancestral property in which his two sons and four daughters have share. He deposed that the plaintiff is a money lender and doing the business of money lending and the alleged sale-deed in the name of the plaintiff is bogus. The defendant No. 2 has examined one Trimbak Yedoo Mhaske as his witness, who has stated that the defendant No. 2 is in continuous possession and he had not seen the possession of the plaintiff or the defendant No. 1 at any time over the suit property. He deposed that the plaintiff was doing the money lending business and he had obtained the loan amount of Rs. 2,000/- from the plaintiff before two years and he repaid Rs. 3,000/- to the plaintiff.

10. The defendant No. 2 filed the certified copies of record of rights and the crop statements at Exhibits 163, 164, 165 and 166 for the period of 1976-77, 1977-78 and 1978-79. The defendant No. 2 also filed the record of rights at Exhibit 167 showing the name of one Shridhar Dagdu Maske in respect of the suit field, and Exhibit 168 in respect of the sale-deed executed by Dagdu Maske in favour of the defendant No. 2. The revenue tax receipts paid to the Government by the defendant No. 2 for the year 1976-77 and 1977-78 were also filed at Exhibit 169. The certified copy of the sale index in the name of Trimbak Yedoo Mhaske from Damodar Salwe was filed at Exhibit 170. The index in respect of sale executed by Manikrao Malhari in favour of Damodar Salwe was also filed at Exhibit 171, and in the name of Govinda Mhaske by Damodar Salwe at Exhibit 172. The defendant No. 2 also filed the certified copy of the sale-deed respect of sale-deed of Survey No. 71/1 in the name of Damodar Narayan Salwe executed by Maroti Yedoo Mhaske at Exhibit 173. The sale index in respect of Survey No. 20/2 in the name of Damodar Salwe by Trimbak Yedoo Mhaske is placed on record at Exhibit 174. The transaction of sale between the defendant No. 2 and Shridhar Dagdu evidenced by the index at Exhibits 175, 176 and 177 is also brought on record.

11. The Trial Court considered the sale-deed at Exhibit 128 and held that on perusal of the contents, it appears that in the sale-deed there is no mention that defendant No. 1 Ramkrushna was the owner of the suit property to the extent of 2 acres and 20 gunthas of land out of Survey No. 20/2 and, therefore, he was selling the land to the plaintiff along with the defendant No. 2. It further held that the sale-deed at Exhibit 128 does not mention that the defendant No. 2 is the owner of one acre of land only, which has been sold to the plaintiff. It further held that the sale-deed does not support the oral evidence and the pleadings of the plaintiff that Rs. 4,000/- was paid to defendant No. 1 Ramkrushna at his house and there is no evidence on record to show that defendant No. 1 Ramkrushna was the owner and in possession of the land admeasuring 2 acres and 20 gunthas, which was sold to the plaintiff for Rs. 7,000/-. It recorded a categorical finding that there is a failure to prove that the defendant No. 1 had become the owner and in possession of the land admeasuring 2 acres and 20 gunthas out of Survey No. 20/2.

12. The Trial Court also considered the evidence of PW 2 Patilbuwa Laxman, an attesting witness to the sale-deed at Exhibit 128, and further considered his omission that the consideration for the sale-deed at Exhibit 128 was fixed at Rs. 10,000/-. It held that according to the said witness, an amount of Rs. 3,000/- was paid separately to each of the defendants by the plaintiff before the Sub-Registrar, but the sale-deed at Exhibit 128 does not disclose this fact. It further held that there is an omission on the part of this witness to state that an amount of Rs. 4,000/- was already paid to defendant No. 1 Ramkrushna at the house of the plaintiff. Considering the bills at Exhibits 106 to 109, the Trial Court held that there is no evidence to show that at the time of execution of the sale-deed at Exhibit 128, the plaintiff was having an amount of Rs. 6,000/- with him to pay consideration. It holds that the plaintiff has not examined the scribe of the sale-deed Exhibit 128 to prove its contents. There is specific finding of the Trial Court that "the plaintiff has not proved actual passing of the consideration amount to the defendant No. 2, as per Exhibit 128 in question." It held that the evidence of this witness is contradictory to the evidence of the plaintiff and it is inconsistent with the original sale-deed at Exhibit 128. It further held that the evidence of the plaintiff and his witness Patilbuwa is not corroborated by the evidence of defendant No. 1 Ramkrushna about the execution of the sale-deed at Exhibit 128.

13. The Trial Court considered the evidence of the defendant No. 2 and DW 2 Trimbak Yedoo examined by the defendant No. 2. The defendant No. 2 stated that he has never executed the sale-deed in question and did not receive the amount of consideration. He stated that the loan was obtained from the plaintiff, and for security, the sale-deed at Exhibit 128 was executed. He placed on record various sale-deeds in respect of the suit property and for his other properties, which were nominal sale-deeds. It further recorded the finding that the plaintiff himself has sold the suit land to the defendant No. 2 for a total consideration of Rs. 4,000/- and Exhibit 117, the sale-deed, is the evidence of it. The defendant No. 2 produced on record the sale-deed at Exhibit 168 dated 2-2-1974 in favour

of one Shridhar Dagdu for Rs. 1,500/- for sale of 1 hectare and 41 acres of land out of the suit land. He also produced on record Exhibit 171, the index certified copy showing the sale transaction between the plaintiff and one Manikrao on 14-4-1975; the sale transaction between the plaintiff and Govinda dated 1-2-1978 at Exhibit 172; the index certified copy of Maroti Yedoo Mhaske for sale transaction dated 20-5-1975 for Rs. 1,500/- at Exhibit 173; and the index certified copy in respect of sale transaction by Trimbak Yedoo Mhaske at Exhibit 174 in the name of the plaintiff. The Trial Court holds, after taking into consideration the oral evidence of the defendant No. 2 and DW 2 Trimbak Yedoo, that all these transactions produced on record to show that the defendant No. 2 was executing nominal sale-deeds as security and the plaintiff was engaged in money lending transaction.

14. The Trial Court further holds that the defendant No. 2 has produced copies of record of rights and crop statements at Exhibits 163, 164, 165, 166 and 167 for the period from 1976-77 to 1978-79 evidencing that he was throughout in possession of the suit property. The Trial Court relies upon certified copy of Chapter Case No. 32 of 1979 under Section 107 of the Code of Criminal Procedure in between the plaintiff and the defendant No. 2 evidencing that the sale-deed at Exhibit 128 is for reconveyance. It holds on the basis of pleadings in the plaint and other evidence on record that the suit property is the ancestral property of the defendant No. 2, who has two sons and four daughters, and except the suit property, there is no source of income to the family. There is a specific finding recorded that the transaction at Exhibit 128 is hit by the provision of Section 8AA of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act.

15. The lower Appellate Court has held that in view of the existence of the registered sale-deed at Exhibit 128 and the oral evidence led by the plaintiff and his witnesses, it has to be held that the document at Exhibit 128 has been proved. Relying upon the notice at Exhibit 113 dated 27-4-1979 issued by the defendant No. 2, the lower Appellate Court has held that the stand of the defendant No. 2 is inconsistent and the defendant No. 2 does not have any grievance about one acre of land which he sold under the sale-deed at Exhibit 128 to the plaintiff and, therefore, he cannot urge that the sale transaction was a money lending transaction or that his thumb impression on the document was taken by playing fraud upon him. It holds that defendant No. 2 Tejrao cannot escape the amount of sale of land under the sale-deed.

16. The lower Appellate Court relied upon the document at Exhibit 111 to hold that immediately after the receipt of consideration, the defendant No. 2 has discharged his debts of Co-operative Society. The receipt at Exhibit 112 is relied upon to hold that the defendant No. 2 cleared the land revenue arrears on 23-4-1979. It records a finding that the defendant No. 2 appears to be a chronic indebted person in the habit of raising loans from whichever sources to meet out his daily needs, and it can safely be inferred that on all the occasions, he could

not have the loan by having the nominal transaction. According to the lower Appellate Court, the defendant No. 2 has not come out with a case in the notice at Exhibit 113 that the transaction was by way collateral security for money lending.

17. The lower Appellate Court relies upon the admission given by the defendant No. 1 and it holds that it is against his own interest and he can never be a loser even if the plaintiff is non-suited. The Appellate Court holds that the defendant No. 2 could get back the land from the defendant No. 1 or to get reconveyance-deed by proving that the transaction of sale of land on 4-7-1978 evidenced by sale index at Exhibit 116 was a money lending transaction, but he never raised any grievance about it for a period of about 8 to 9 months prior to the execution of the sale-deed on 27-4-1979 at Exhibit 128. The Court further holds that in the notice at Exhibit 113, the defendant No. 2 himself has accepted that he had sold out one acre of land to the plaintiff for Rs. 10,000/- and he had also accepted the receipt of consideration, but had only put the grievance about the transaction between the plaintiff and the defendant No. 1 under the same document. The Court further holds that whether the payment was made to the defendant No. 2 or the defendant No. 1, makes no difference once the fact that the sale-deed was executed for a total consideration of Rs. 10,000/- is accepted. The Court holds that the defendant No. 2 has failed to prove that the suit transaction was an outcome of a money lending transaction.

18. Before proceeding to deal with other aspects of the matter, I shall first deal with the second part of substantial question of law at Serial No. [2]. Section 8 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act deals with "fragmentation prohibited" and it runs as under :

"8. Fragmentation prohibited.

No land in any local area shall be transferred or partitioned so as to create a fragment."

The aforesaid provision states that no land in any local area shall be transferred or partitioned so as to create a fragment. Thus, there is a statutory prohibition to create a fragment.

19. Sub-section (4) of Section 2 of the said Act defines "fragment" as under :

"2. Definitions.

In this Act, unless there is anything repugnant in the subject of context,

"(4) "Fragment" means a plot of land of less extent than the appropriate standard area determined under this Act:

Provided that no plot of land shall be deemed to be a fragment by reason of any diminution in its area by diluvion."

"Fragment" means a plot of land of less extent than the appropriate standard

area determined under the Act.

20. Sub-section (10) of Section 2 of the said Act defines "standard area" as under :

"2. Definitions.

In this Act, unless there is anything repugnant in the subject of context,

"(10) "Standard area" in respect of any class of land means the area which the State Government may from time to time determine under section 5 as the minimum area necessary for profitable cultivation in any particular local area, and includes a standard area revised under the said section."

Section 5 of the said Act regarding "determination and revision of standard areas" is reproduced below :

"5. Determination and revision of standard areas.

(1) The State Government shall, after considering the objections, if any, received within three months of the date of publication of the notification under sub-section (2) of section 4 in the village concerned and making such further inquiry as it may deem fit, determine the standard area for each class of land in such local area.

(2) The State Government may, at any time, if it deems fit expedient so to do revise a standard area determined under sub-section (1). Such revision shall be made in the manner laid down in section 4 and sub-section (1)."

Under Section 5 read with the definition of "standard area" in the said Act, the State Government is empowered to determine and revise the standard area for different classes of land in the local area by the notification to be published in the official gazette. In view of this, the transfer or partition of the suit land in any manner creating a fragment, that is less extent than the standard area of two acres, is prohibited under Section 8 of the said Act.

21. Section 9 of the said Act deals with "penalty for transfer or partition contrary to provisions of Act", and it reads as under :

"9. Penalty for transfer or partition contrary to provisions of Act.

(1) The transfer or partition of any land contrary to the provisions of this Act shall be void.

(2) The owner of any land so transferred or partitioned shall be liable to pay such fine not exceeding Rs. 250 as the Collector may, subject to the general Orders of the State Government, direct. Such fine shall be recoverable as an arrear of land revenue.

(3) Any person unauthorisedly occupying, or wrongfully in possession of, any land, the transfer or partition of which, either by the act of parties or by the

operation of law, is void under the provisions of this Act, may be summarily evicted by the Collector."

In terms of sub-section (1) of Section 9 of the said Act, the transfer or partition of any land contrary to the provisions of the Act is declared to be void, and under sub-section (3) therein, the Collector is empowered to summarily evict the persons unauthorisedly occupying any land or wrongfully in possession of it.

22. The suit property is Survey No. 20/2, admeasuring 3 acres and 20 gunthas (1 hectare and 42 acres), situated at Village Gangalgaon, Tahsil Chikhli, District Buldana. The "standard area" in respect of the suit land has been determined under Section 5 of the said Act, to be the area of 2 acres of land and this fact is not in dispute. Therefore, the transfer or partition of any portion of this land creating a fragment in any manner becomes void in terms of sub-section (1) of Section 9 of the said Act. The case of the plaintiff is that the defendant No. 2, by executing the registered sale-deed dated 4-7-1978, has transferred 2 acres and 20 gunthas of land in favour of the defendant No. 1. Though the land of 2 acres and 20 gunthas, which is transferred, is not a fragment, such transfer creates a fragment of one acre of the remaining land out of total 3 acres and 20 gunthas in Survey No. 20/2. The transfer of land by the registered sale-deed dated 4-7-1978 by the defendant No. 2 in favour of the defendant No. 1, therefore, becomes void under sub-section (1) of Section 9 of the said Act. It has, therefore, to be held that the sale-deed dated 4-7-1978 was hit by Section 8 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.

23. If the sale of land admeasuring 2 acres and 20 gunthas on 4-7-1978 in favour of the defendant No. 1 out of Survey No. 20/2, i.e. the suit property, was void, the defendant No. 1 does not become owner of the said portion of the land. The ownership of it remains with the defendant No. 2. The plaintiff was seemingly conscious of this fact and also of the fact that single sale-deed in respect of one acre of land from the defendant No. 2 shall be hit by Section 8 of the said Act. In order to avoid this, the only option left with the plaintiff was to join both the defendants as vendors in common sale-deed at Exhibit 128. It is not the case of the plaintiff that by the sale-deed at Exhibit 128, he has purchased the land admeasuring 2 acres and 20 gunthas out of the suit property from the defendant No. 2, or that he has paid the consideration of Rs. 7,000/- to the defendant No. 2 for purchase of the said portion of the land. The sale transaction at Exhibit 128 cannot, therefore, be in respect of 2 acres and 20 gunthas of land out of the suit property.

24. The defendant No. 2 does not dispute that he has sold one acre of land to the plaintiff by the sale-deed at Exhibit 128 for the consideration of Rs. 3,000/- and he has shown his readiness and willingness to deliver the possession of it to the plaintiff. However, the sale or transfer of one acre of land out of Survey No. 20/2 by the registered sale-deed at Exhibit 128 is the sale of fragment, which is hit by Section 8 of the said Act, and such sale becomes, therefore, void under sub-section (1) of Section 9 therein. The second portion of the substantial question of

law at Serial No. [2] is answered accordingly. The plaintiff cannot, therefore, seek possession on the basis of such sale-deed.

25. The Trial Court has recorded the finding upon consideration of the oral and documentary evidence on record that the defendant No. 2 has established his cultivating possession over the entire suit property, and in spite of executing two sale-deeds dated 4-7-1978 in favour of the defendant No. 1, and dated 21-4-1979 at Exhibit 128 in favour of the plaintiff, the defendant No. 2 was in continuous possession of the suit land, which was never parted with. The lower Appellate Court has not recorded any finding on this aspect of the matter. The plaintiff has failed to establish that he was dispossessed from the suit property on 26-4-1979 or 18-6-1979, as alleged in the plaint. The plaintiff is, therefore, not entitled to possession of land on the basis of the sale-deed at Exhibit 128, which is void. The substantial question of law at Serial No. [1] is answered accordingly.

26. The lower Appellate Court has heavily relied upon the notice dated 26-4-1979 at Exhibit 113 issued by the defendant No. 2 in the name of the plaintiff, and it has been held that the stand of the defendant No. 2 is inconsistent to the effect that at one stage the defendant No. 2 states that he does not have any grievance about one acre of land sold under the sale-deed at Exhibit 128 and at another stage, it is stated that the sale-deed at Exhibit 128 was a money lending transaction. I have gone through the notice at Exhibit 113, which is produced on record by the plaintiff himself. It is issued by the defendant No. 2 on 26-4-1979, that is immediately after five days of the execution of the sale-deed in question at Exhibit 128 on 21-4-1979. There is no inconsistency in the stand taken by the defendant No. 2 either in the written statement or in the notice at Exhibit 113. The defendant No. 2 is consistent in his stand that he has sold one acre of land by the sale-deed at Exhibit 128 for a total consideration of Rs. 3,000/-, but has denied to have sold 2 acres and 20 gunthas of land to the plaintiff. In the notice at Exhibit 113 itself, the defendant No. 2 has taken the stand that he had taken the loan of Rs. 1,000/- from the defendant No. 1 and the conditional sale-deed was executed in his favour. The notice further states that at the time of registration of the sale-deed dated 4-7-1978, an amount of Rs. 2,000/- was given to the defendant No. 2, and immediately upon coming out of office, the defendant had taken back an amount of Rs. 1,000/-. The notice clearly states that it was only one acre of land, which was sold to the plaintiff by Exhibit 128. It further states that both the sale-deeds were nominal. Be that as it may, once it is held that the entire transaction of sale at Exhibit 128 was void, being contrary to the provision of Section 8 of the said Act, the plaintiff fails to establish his claim for possession of the suit land.

27. The Trial Court has considered the oral and documentary evidence on record to hold that there was a consistent practice of executing nominal sale-deeds in respect of the suit property also. On 25-1-1978, the defendant No. 2 had purchased the suit property from the plaintiff by the registered sale-deed, which

is placed on record at Exhibit 117. It was for a total consideration of Rs. 4,000/-. Even prior to that, the sale-deed dated 2-2-1974 at Exhibit 168 in respect of the suit property was executed in favour of one Shridhar Dagdu for a total consideration of Rs. 1,500/-. Similar sale instances at Exhibit 178 dated 1-2-1978, Exhibit 173 dated 20-5-1975, and Exhibit 174 have been produced on record and proved. The Trial Court has also relied upon the certified copy of Chapter Case No. 32 of 1979 under Section 107 of the Code of Criminal Procedure in between the plaintiff and the defendant No. 2, evidencing that the sale-deed at Exhibit 128 was for reconveyance. The lower Appellate Court has ignored this entire evidence while reversing the finding of the Trial Court that the transaction at Exhibit 128 was a money lending transaction. The finding of the lower Appellate Court is, therefore, perverse and is liable to be set aside. The substantial question of law at Serial No. [3] is, therefore, answered accordingly.

28. In the result, the second appeal is allowed. The judgment and order dated 31-7-1995 passed by the lower Appellate Court in Regular Civil Appeal No. 98 of 1987 is hereby quashed and set aside and the decree passed by the Trial Court on 31-7-1987 dismissing Regular Civil Suit No. 357 of 1985 is restored. No order as to costs.