

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8747 OF 2017

VEENA DEVI

Appellant(s)

VERSUS

YOGESH KUMAR

Respondent(s)

WITH

CIVIL APPEAL NOS. 8748-8749 OF 2017

O R D E R

The present appeals arise from concurrent finding of facts by three courts that the document in question was a sale deed and not a deed of mortgage pertaining to a loan taken by the appellants from the respondents.

Learned counsel appearing on behalf of the appellants submits that the appellants had mortgaged the suit property to the respondents for a loan amount of Rs. 50,000/- each respectively. A mortgage deed dated 24 June 2004 had been executed prior to the agreement for sale dated 1 July 2004. Unfortunately the mortgage deed and the agreement for sale could not be brought on record before the courts below. The appellants are ready and willing to repay the loan amount with reasonable interest.

Learned counsel for the respondents submitted that the agreement was one for sale only. No mortgage deed was ever executed. The appellants cannot be allowed to bring any documents on record at this stage in the appeal, if it was not produced before the courts below and no explanation for the same is forthcoming.

To our mind, the scope of interference with concurrent findings of fact by three courts is extremely limited under Section 136 of the Constitution of India unless there is any perversity causing miscarriage of justice.

We have gone through the agreement for sale dated 1 July 2004 filed in the form of additional documents to satisfy ourselves with regard to its nature.

The recitals leave no doubt in our mind that it is a sale deed and does not reflect in any manner that it was a conditional sale for a loan that may have been taken by the appellants from the respondents.

The mortgage deed dated 24 June 2004 claimed by the appellants has never been brought on record.

In any event, the execution of a separate mortgage deed from what is contended to be an agreement for conditional sale militates against the rights of the mortgager to contend that it was a conditional sale and not a sale deed in view of the proviso to Section 58(c) of the Transfer of Property Act, 1882.

The appeals are dismissed.

Pending application(s), if any, stand disposed of.

.....J.
(NAVIN SINHA)

.....J.
(B.R. GAVAI)

NEW DELHI
SEPTEMBER 26, 2019

ITEM NO.105

COURT NO.12

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8747/2017

VEENA DEVI

Appellant(s)

VERSUS

YOGESH KUMAR

Respondent(s)

WITH

C.A. No. 8748-8749/2017 (XIV-A)

Date : 26-09-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE B.R. GAVAI

For Appellant(s)

Mr. Sarvesh Singh, AOR

Ms. Herinder Kaur Brar, AOR

For Respondent(s)

Mr. Varinder Kumar Sharma, AOR
Yadao P.S., Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)
COURT MASTER (SH)(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)