

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 178 OF 1990
WITH
CIVIL APPLICATION NO. 5454 OF 2002**

Laxman Ananda Sonawane – died (Orig. Plaintiff)
through legal representative

Sou. Surekha W/o Trimbak Navpute
Age: 38 years, Occu. Household,
R/o. Prakash Nagar (East),
Galli No.3, N-2, Ramnagar,
Aurangabad, Dist. Aurangabad ...APPELLANT

versus

1) Rangnath S/o Ganpat Patil – deceased
His L.Rs.

(i) Shivaji S/o Rangnath
Age: 50 years, Occu: Business,
R/o. Sundarnagar, Nageshwarwadi,
Aurangabad.

(ii) Tanaji s/o Rangnath
Age: 47 years, Occu: Business,
R/o. As above.

--- Abated
(vide Court's orde
dated 25-11-2009)

(iii) Sambhaji S/o Rangnath
Age: 44 years, Occu. Agriculture,
R/o. Teesgaon, at present
Kotwalpura, Mill Corner,
Aurangabad

(iv) Pandurang S/o Rangnath
Age: 38 years, Occu. Agriculture,
R/o. Kotwalpura, Mill Corner,
Aurangabad

2) Wansingh S/o Mangaram Rathod,
Age: 32 years, Occu. Agriculture,
R/o. Georai Village Tanda,
Tq. & Dist. Aurangabad

...RESPONDENTS
(Orig. Defendants)

.....

Mr. P.B. Gapat, Advocate for appellant.
Mr. C. K. Shinde, Advocate for respondents No. 1(i) to (iv)
Mr. N. K. Kakade, Advocate holding for
Mr. H. M. Karwa, Advocate for respondent No. 2

.....
WITH
CIVIL APPLICATION NO. 3183 OF 2010
WITH
CIVIL APPLICATION NO. 13122 OF 2014
IN
SECOND APPEAL NO. 178 OF 1990

Wansing S/o Mangaram Rathod

... APPLICANT

V E R S U S

Laxman Ananda Sonawane – died
through legal representative
Sou. Surekha W/o Trimbak Navpute & ors.

...RESPONDENTS

...
Mr. N. K. Kakade, Advocate for applicant
Mr. P.B. Gapat, Advocate for respondent No. 1A
Mr. C. K. Shinde, Advocate for respondents No. 2/1, 2/2 and 2/3
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 10th DECEMBER, 2015

ORAL JUDGMENT :-

1. This is second appeal of plaintiff after having been successful in the trial court and said decision and decree having been reversed at appellate stage.

2. Upon hearing learned counsel for parties and on perusal of decisions of the trial as well as appellate courts, position emerges that plaintiff – appellant had gone to the court claiming that Ranganth having intended to part with suit property, had entered into agreement of sale. In pursuance thereof, amount of Rs. 500/- had been parted with by him initially and states to have acquired possession of the suit

property on the very day. Subsequently, an amount of Rs. 1270/- had been obtained by Rangnath from plaintiff and document at Exhibit-81 was stated to have been executed in respect of suit property wherein, it is contended, there is acknowledgment of earlier amount of Rs. 500/- having been paid by plaintiff to Rangnath. This transaction is claimed to have taken place just a day before (i.e. on 15-03-1978) the agreement of sale. A document is stated to have been executed on 16-03-1978 purporting to be agreement of sale. Recitals refer to that plaintiff has entered into transaction of purchase of a land plot admeasuring 60' X 15' with Rangnath and total agreed consideration was Rs. 3600/- in respect of suit property and out of agreed consideration on 16-03-1978 an amount of Rs. 1600/- had been parted with by plaintiff to Rangnath. Agreement of sale, further refers to that balance of Rs. 1600/- would be paid at the time of execution of sale deed and further that accordingly plaintiff was being put in possession on that day of the suit property. Said document at Exhibit-82 had been scribed by one Ghanshyam and signed by two witnesses.

3. It is contention of the plaintiff that upon coming into possession immediately he had started construction over the suit property and constructed four rooms on the same. To support said contention, receipt of payment to mason has been placed on record. Since sale deed was not being executed, notice had been given by the plaintiff to Rangnath - defendant No. 1 through lawyer, stating that plaintiff is ready and willing to pay balance amount of Rs. 230/- referring to that earlier payment of Rs. 1770/- under receipt at Exhibit-81 and

Rs.1600/- upon execution of agreement of sale Exhibit 82. Notice has been replied with denial of contents of the same stating that defendant No. 1 Rangnath had never intended to execute sale deed in plaintiff's favour and had executed sale deed in favour of defendant No. 2. Since there was disturbance to plaintiff's possession, suit had been filed by him seeking specific performance of agreement to sell dated 16-03-1978 and injunction, coupled with protection of his possession over the suit property pursuant to section 53A of the Transfer of Property Act, 1882.

4. Defendants had appeared in the suit and filed written statement and had denied the contentions in the pleadings of the plaintiff. It has been absolutely denied that there was execution agreement of sale Exhibit-82, or for that matter, receipt Exhibit-81. It has been referred to that having regard to cordial relations, situation emerges due to dispute with earlier landlord of the plaintiff, he was let in the suit property. The rooms were constructed by Rangnath and at his instance. It has been further contended that it was, in fact, due to cordial relations, plaintiff had been allowed to make payment towards taxes since he was allowed to reside in the northern portion of the suit property. Rangnath had entered into transaction of sale deed with defendant No. 2 for consideration in respect of southern half portion of the suit property and accordingly he (defendant No. 2) had acquired ownership over southern portion and constructed the same. Theory put up by the plaintiff was bogus, false and not reliable and as such requested for dismissal of the suit.

5. Along with the written statement defendant No. 1 had filed counter-claim seeking possession of the suit property based on title in respect of norther portion.

6. Trial court held that plaintiff has proved agreement of sale dated 16-03-1978, he was inducted in possession on the basis of the same and further that he is entitled to protection under section 53A of the Transfer of Property Act, 1882 and to specific performance of contract dated 16-03-1978 as well as injunction. Trial court further held that defendant No. 2 had not been able to prove, that he is *bonafide* purchaser for value without notice, that he had been put in possession or that he had invested huge amount for construction. It has been held that defendants could not prove plaintiff was licensee in occupation and it was consequently held that legal heirs of deceased Rangnath were not entitled to possession.

7. The appellate court had considered that solitary witness had been examined on behalf of plaintiff to prove the document dated 16-03-1978 at Exhibit-82. Appellate court has considered that witness - Ghanshyam, scribe of the document, did not appear to be aware of the persons who signed the document as witnesses, and signatures of witnesses had not been taken in his presence. He was not able to state as to which portion was wrote on the instructions of the plaintiff - Laxman and which was the portion scribed on the instructions given by Rangnath. Appellate court has taken into account despite aforesaid evidence by him he ventured to say that contents of said document were read over to the witnesses, while he had, in fact, deposed that

witnesses had not signed in his presence and he was not aware about who were the witnesses. Coupled with this, appellate court has also considered the discrepancies occurring in respect of the amount being paid pursuant to agreement as well as amount which has been stated to be paid just a day before agreement of sale. An *Isar pawati* is stated to be executed between plaintiff and Rangnath and in which deceased Rangnath is stated to have received agreed amount of Rs.1770/-, which contains Rs.500/- earlier paid to Rangnath and upon which possession is said to have been obtained by the plaintiff.

8. Appellate court has further considered that in spite of *Isar Pawati*, agreement to sell dated 16-03-1978 refers to total consideration agreed upon Rs. 3600/- and out of which Rs. 1600/- had been paid by plaintiff to Rangnath at the time of execution of agreement and balance amount of agreement of Rs. 1600/- was agreed to be tendered by the plaintiff to Rangnath at the time of execution of sale deed. Appellate court had considered that there is variance in versions of the plaintiff. Appellate court also appears to have considered that assertion by plaintiff about construction of four rooms upon coming into possession of the property to be unreliable, it being not supported by any proof or for that matter, any permission and further that receipt of payment to mason bearing signature of Rangnath would not be indication of that it is acceptance of agreement of sale. It emerges on record that construction appears to have been carried out upon instructions of Rangnath. This certainly depicts that parties did not intend to enter into agreement of sale as has been

alleged by the plaintiff. There is no evidence in respect of the expenditure incurred on the construction by plaintiff. Solitary receipt relied on by plaintiff falls way short to evidence, entire construction to be by plaintiff. With reference to boundaries under the sale-deed and correction deed in favour of defendant No. 2, the court appears to have considered that from the same, it emerges that plaintiff can be said to be in possession only on the northern portion having regard to registered document in favour of defendant no. 2, plaintiff's possession on entire land cannot be said to have sanctity, muchless legal. The appellate court has disbelieved payment of tax depicted, helps the plaintiff to say that he is able to show title in respect of suit property. So far as contention about induction of other persons into property being by Laxman is concerned, the same has been taken care of, by observations in paragraph No. 19 of the judgment.

9. After scanning entire evidence the appellate court has reversed and set aside judgment and decree of the trial court and directed plaintiff to deliver possession of northern one half portion to defendant No. 1.

10. Substantial questions of law thus will have to be framed on aforesaid background, (i) whether evidence on record can be said to throw sufficient light on the intention of parties to enter into transaction as asserted by the plaintiff ?, (ii) whether protection under section 53A of the Transfer of Property Act, 1882 can be said to be available to the plaintiff ? and (iii) Can be said that plaintiff is entitled to specific performance of agreement of sale dated 16-03-1978 ?.

11. Learned counsel for appellant submits that description of the property on the northern side in the sale deed and in the correction deed appearing in respect of transaction entered into with defendant No. 2 by defendant No. 1, is admission by Rangnath of exclusive ownership and possession of the plaintiff over the suit plot, whether appellate court ignoring the same was proper and would not operate as estoppel against defendant No. 1 and his legal heirs.

12. According to him, the appellate court has erred in overturning the findings of the trial court in respect of protection under section 53A of the Transfer of Property Act, 1882 to plaintiff. According to him, possession of the plaintiff over northern portion of suit property is sufficient notice to defendant No. 2 and despite that he had ventured to enter into transaction with defendant No. 1. Specific performance as a discretionary relief been granted to plaintiff pursuant to the written documents entered into between the parties, the appellate court ought not to have meddled with same and muchless reversed.

13. Learned counsel for respondents, however, contends that induction of plaintiff over northern portion of the suit property by defendant No. 1 is not in dispute, and it was permissive under licence in the grave urgency as had been expressed by plaintiff since having dispute with earlier landlord. There was no agreement and it cannot be said that any agreement has been proved by plaintiff. He submits that in any case having regard to feeble and dithering evidence adduced by plaintiff, it is not a case wherein it can be said that plaintiff would be entitled to specific performance of alleged agreement of sale. Receipts

in respect of municipal taxes and water charges cannot infuse character of the ownership or intended ownership in favour of plaintiff.

14. Learned counsel for respondents in the course of submission has relied on the decision of the Supreme Court in the case of *Lourdu Mari David and others Vs. Louis Chinnaya Agroiaswamy and others* reported in *AIR 1996 Supreme Court 2814(1)*. The case is with reference to discretion and equitable relief and the person who comes to the court, must come with clean hands. According to him, plaintiff in present case has not come to the court with clean hands, for, he had suppressed quite a few relevant matters.

15. Learned counsel further placed reliance on the decision of Supreme Court in the case of *A.C. Arulappan Vs. Smt. Ahalya Naik* reported in *AIR 2001 Supreme Court 2783*. According to him, cordial relations which inducted the plaintiff into possession over the suit property is being unfairly used by the plaintiff to his advantage. Under the circumstances, the plaintiff cannot take advantage of such possession, the discretion has rightly been exercised by the appellate court and it being final facts finding court, the decision given on facts when appreciation of evidence is not perverse and as such should not be disturbed and suit deserves to be dismissed.

16. As referred to hereinabove, earlier trial court had given finding in favour of plaintiff decreeing the suit whereas appellate court has reversed the same. Appreciation of evidence by appellate court to a large extent appears to be reasonable in the present matter, for,

theory developed by plaintiff with regard to the transaction appears to be on fragile foundation. For, initially negotiations are claimed to have been taken place, yet there is no reference to as to what were negotiations and what was consideration agreed upon and as to why he had parted with Rs. 1770/- and what was ultimate consideration agreed upon. There is no explanation given, as to why reference to total consideration was not made in *Isar Pawati* Exhibit-81; there is no explanation coming forward why on very next day agreement of sale has been executed, and transaction a day before has not been referred to in the same; as to why possession having been taken over by plaintiff at the time of making payment of Rs. 500/- has not been referred to in the agreement of sale or for that matter there is no reference to possession having been taken in *Isar Pawati* of a day earlier to the agreement of sale. Evidence in respect of agreement of sale as has been appreciated by appellate court is reliable. There are discrepancies occurring in amount paid and allegedly agreed to be paid and consideration shown in the agreement of sale. From all aforesaid coupled with a consideration also, although has not been referred to by both the courts, as to why a man of ordinary prudence would carry out construction over the property not belonging to him legally by expending huge amount over the same.

17. It does not appear to be a case wherein plaintiff had been inducted in the possession of the suit property by any valid agreement which can be said to be enforceable at law. The document cannot be said to be duly proved. Thus, plaintiff cannot be said to have proved

his entitlement to specific performance of agreement, which is dubious and further situation as emerged on evidence is that it cannot be considered to have been proved. Thus, plaintiff would not be entitled to protection under section 53A of the Transfer of property Act, 1882. Eventually, title of the property is retained by defendants entitling them to have its possession and rendering possession by plaintiff as sought by defendants as that merely on licence.

18. In the circumstances, substantial questions of law stand answered in the present case as per discussion above and does not appear to carry any substance in favour of the plaintiff. Second appeal, as such, stands dismissed.

19. In view of dismissal of appeal, civil applications do not survives and the same are disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
