

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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SECOND APPEAL NO. 324 OF 2015
WITH CA/7917/2015 IN SA/324/2015

GAUSODDIN RAZZAK
VERSUS
CHOTIBEE JANIMIYAN

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Advocate for Appellant : Mr. Shaikh Mujtaba Gulam Mustafa

Advocate for Respondent: Mr. A. G. Godhamgaonkar.

CORAM: T. V. NALAWADE, J.
DATED: 19th OCTOBER, 2015.

PER COURT:

1. The appeal is filed against the judgment and decree of Special Civil Suit No.24 of 2005 which was pending in the Court of Civil Judge, Senior Division, Kandhar, District Nanded and also against the judgment and order of Regular Civil Appeal No. 10 of 2008 which was pending in the Court of District Judge-1, Kandhar. The suit filed by present Respondent for relief of specific performance of contract is decided in her favour. Both

the sides are heard.

2. The suit was filed in respect of 56 Ares portion of Survey No.20 Hissa No.6 (Gat No.160) situated at village Kadgaon Hamid. It is the case of the plaintiff that she belongs to village Khandgaon Hamid and the defendant was also living in the same village but recently he migrated to village Bhandar Komta (Wadi). It is contended that the defendant had agreed to sell the suit property to the plaintiff for consideration of Rs.1,11,000/-. It is contended that the agreement was reduced to writing on 13th July, 1998 and on the date of the agreement earnest money of Rs.50,000/- was paid by plaintiff to defendant. It is contended that the remaining amount was to be paid in installments and the installments of Rs.25,000/- each were to be paid by plaintiff to the defendant in the month of March, 1999 and December, 1999. It is contended that the remaining amount was to be paid in the month of January, 2000 and after accepting this amount sale deed was to be executed by the defendant. It is contended by the plaintiff that the possession was handed over to her on

the day of the agreement and since then she has been in possession of the suit property. It is her case that she was and has been ready and willing to perform her part of the agreement. It is contended that even after receipt of most of the consideration amount the defendant avoided to execute the sale deed. It is contended that plaintiff went to the village of defendant with some villagers and requested him to execute the sale deed but the defendant refused to execute the sale deed and so cause of action arose for the suit. The suit was filed in the year 2000 (Old No.4 of 2000) though it is given the number of the year 2005 which was probably given after creation of the Court of Civil Judge, Senior Division at Kandhar.

3. The defendant contested the matter and he denied every thing. He contended that he had never agreed to sell the suit property to plaintiff and no amount was paid by plaintiff as consideration to him. He contended that in the year 1986 there was a dispute between husband of the plaintiff and the defendant in respect of the same property and one suit was also filed by defendant

against the husband of plaintiff. It is contended that due to such strained relations, it was not possible for defendant to agree to sell the suit property to the plaintiff.

4. On the basis of aforesaid contentions, issues were framed. Both the sides gave evidence. The defendant had taken defence that the document of agreement is a forged document. In addition to the agreement (Exhibit-70) there were 3 more documents in respect of the transaction and they were receipts of payments made by plaintiff to defendant. These receipts at Exhibit-62, 63 and 64 are duly proved by the plaintiff by examining attesting witnesses. Evidence is given to prove the possession by examining adjacent owner who is also an attesting witness on Exhibit-70.

5. In view of the aforesaid nature of evidence, and the proof of the four documents, it was necessary for the defendant to prove his defence of forgery. It appears that the defendant gave evidence only to deny that he had signed the documents but he did not take steps to

prove the forgery. The circumstance of filing of the suit bearing No. 115 of 1980 against the husband of plaintiff by defendant in the past is not disputed but due to that circumstance it was not possible to draw inference against the plaintiff that there was no such agreement. The said suit was already decided and evidence is given by the plaintiff that as the defendant shifted to other village he made such agreement. The learned counsel for present appellant, original defendant submitted in this Court that the possession of the suit property is with the plaintiff. Both the Courts below have held that the possession is with the plaintiff. If in the past there was the decree of permanent injunction against the husband of plaintiff and now the defendant is admitting that the plaintiff is in possession of the suit property, this circumstance cannot be ignored. This circumstance is certainly in favour of the execution of the documents by the defendant.

6. The learned counsel for the Appellant took this Court through the evidence of some attesting witnesses and also through the evidence of plaintiff by showing the

paper book prepared by the District Court. He submitted that there are some discrepancies in the evidence. He also submitted that the trial Court has committed error in comparing signature of defendant on Exhibit-70 with signature appearing on other documents and so substantial question of law can be formulated and appeal can be admitted.

7. The reasoning given by the Courts below show that the trial Court had compared the signature appearing on Exhibit-70 with a signature appearing on one application given to Tahsildar by defendant. It appears that such exercise was done as defendant had taken a stand that he never signs in Devnagari, in Marathi language. The other admitted record shows that defendant used to sign in Devnagari script also. Though it is never advisable for Court to go for such comparison when there is a defence of forgery, in view of the defence taken by the defendant of aforesaid nature the court could have ascertained as to whether there is some force and substance in such defence. To that extent no fault can be found though the exercise of comparison was not advisable.

8. Learned counsel for the Appellant also submitted that the evidence does not show that the contents of the documents were proved. He submitted that the evidence is given by the witnesses on execution of the document but Exhibit-70 is a typed document and so the person who typed the document ought to have been examined. This defence also cannot be considered. The trial Court has referred a case of ***Dattatraya V/s Rangnath Gopalrao Kawthekar (dead) by legal representatives and others*** reported as ***AIR 1971 SC 2548***. In this case, the Apex Court has discussed the provision of Section 67 of Evidence Act and has observed that when defence of forgery is taken, it is sufficient for the party relying on the document to prove the execution of the document. In such a case it is not necessary to prove the contents of the document as it can be presumed that the defendant knew the contents, if he fails to prove the forgery. In the present matter also, even after proof of the execution of the document the defendant did not make attempt to prove the forgery. Thus, there was no other alternative before the Courts below than to decree the suit for specific performance of

contract. This Court has already observed that there is also a circumstance like possession of the suit property with the plaintiff. Thus, it cannot be said that the Courts below have not considered the relevant material and due to that there is perversity in the judgments. No material at all is available on the basis of which substantial question of law can be formulated.

9. In the result, appeal stands dismissed.

10. Civil Application No. 7917 of 2015 for stay does not survive any further in view of the final disposal of the appeal and the same also stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.19/10/2015
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