

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

SECOND APPEAL NO.113 OF 2015
WITH
CIVIL APPLICATION NO.3552 OF 2015

Sau. Meerabai Dattatraya Kondake
Age 55 years, Occu. Household,
R/o Datranga Mala, Nalegaon,
Ahmednagar, District Ahmednagar

..Appellant
(Orig.Defendant)

Versus

Ganpat s/o Bhiva Karle,
Age 60 years, Occu. Agri.,
R/o Chas, Taluka and
District Ahmednagar

..Respondent
(Orig.Plaintiff)

Mr N.C. Garud, Advocate for appellant
Mr P.R. Katneshwarkar, Advocate h/f Mr S.R. Andhale, Advocate for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 8th July 2015

PER COURT

1. This appeal is by original defendant.
2. The respondent-plaintiff filed Special Civil Suit No.203/2005 for specific performance, in alternate, refund of money with interest, which came to be decreed by judgment and decree dated 6th April 2009 by the Joint Civil Judge, Senior Division, Ahmednagar.
3. An appeal at the behest of appellant being Regular Civil Appeal No.412 of 2012 before the Ad hoc District Judge-3, Ahmednagar suffered the fate of dismissal vide judgment and order dated 19th November 2014, as such present second appeal.

4. Few facts, as are necessary for deciding the appeal are as under-

5. The appellant herein entered into an agreement on 2nd November 2004 in relation to 1-R land having three rooms, kitchen, latrine, bath room etc ad measuring 75 square meters, located at Chahurana Budruk, Taluka and District Ahmednagar. It is claimed by the respondent that though he was ready and willing to perform his part of contract, the present appellant since has failed to honour the contract, has prompted him to file suit for specific performance.

6. The suit was resisted by the present appellant claiming therein that the plaintiff was trying to take undue advantage of the close relations of the parties. It is further claimed that the transaction in question was not a sale, but was a loan transaction. It is further claimed by the present appellant that the blank stamp papers which were with the Bank, were used by the present respondent.

7. Having regard to the claim made, the learned trial Court framed following issues and answered the same accordingly.

<u>ISSUES</u>	<u>FINDINGS</u>
1. Does the defendant prove that plaintiff got executed blank documents and converted it into agreement to sell ?	No
2. Whether defendant has failed to perform her part of contract?	Yes

- 2-A. Does plaintiff prove that defendant executed agreement to sell with consideration in favour of plaintiff on 01-06-2005 ? Yes
- 2-B. Does the plaintiff prove that he was always ready and willing to perform his part of contract ? Yes
3. Whether plaintiff is entitled for specific performance of contract? Yes
- 3-A. In alternatively, is the plaintiff entitled to recover Rs.5,00,000/- and damages of Rs.2,00,000/- from the defendant ? Partly yes
- 3-B. In alternatively, is the plaintiff entitled to interest at the rate of 18% p.a. on decretal amount? Partly yes @ 9% p.a.
4. What order ? As per final order
8. In support of the claim made by the plaintiff, he has examined himself at Exh.58, PW-2 Sumatilal Baldota a Notary at Exh.67 and PW-3 Kishor Belhekar Scribe of the agreement at Exh.73.

The defendant examined herself at Exh.30 and DW-2 Ratnakar at Exh.50 to rebut the contentions.

9. With the above background, learned Counsel for the appellant would urge following question of law:

“ Whether Sections 3 and 4 of the Maharashtra Gunthewari Development Act, 2001 do incorporate the post facto sanction as is ordered by learned trial Court in the present matter, so as to have regularisation of the suit property ?”

10. He would further urge that the evidence of PW-2 Notary, so also PW-3 Scribe was not trustworthy, as they have not deposed in support of the execution of agreement in question. He has also urged that readiness and willingness as is contemplated under Section 16 of the Specific Relief Act was not at all responded by the present respondent.

11. Per contra, learned Counsel for respondent would urge that the readiness and willingness, so also the weightage given to the evidence of PW-2 Notary and PW-3 Scribe are strictly in accordance with the scheme of Evidence Act. He would further urge that the provisions of Section 3 and 4 of the Maharashtra Gunthewari Development Act, 2001 (hereinafter referred to as “the Act” for brevity) contemplates regularisation of a non-sanctioned plot by the planning authority. He would further urge that the Act itself contemplates sanction of irregular plots and is brought into statute but for the same object and as such, sought dismissal of the second appeal.

12. Upon analysis of the submissions made by learned Counsel for the respondent, it is noticed that initially the agreement was entered into between the parties on 2nd November 2004 Exh.52 in which the time was subsequently extended on 1st June 2005 vide Exh.53 by incorporating recitals in the said agreement Exh.52.

13. Both these documents were proved by examining PW-3 Scribe Kishor Belhekar, so also by present respondent by entering into witness box. The said Scribe in his evidence, in clear terms has stated that at both the times, i.e. at the time of execution of agreement at Exh.52 and extension of time at Exh.53, the parties were very much present. He has narrated that he has scribed the document as per the instructions given by the appellant and the respondent. In view thereof, in my opinion, there is nothing on record to disbelieve the testimony of said witness PW-3. Apart from above, it is required to be noted that PW-2 Notary, who was examined so as to demonstrate the execution of agreement at Exh.52 and Exh.53 is concerned, the said Notary has deposed in support of the notarising of agreement plaintiff. Nothing was elicited from the testimony of the said witness so as to support the case of present appellant as regards execution of the agreement in question.

14. So far as the issue as regards readiness and willingness of the respondent is concerned, it is required to be noted that the plaintiff Ganpat, in his examination has deposed that on 2nd November 2004,

Rs.4 lakhs and subsequent thereto Rs.1 lakh was paid to the present appellant. He has deposed in support of the above referred payment, as he was maintaining a Bank account.

15. It is also required to be noted that the defendant-appellant though has come out with a case that scribing of the stamp paper and execution of agreement in question i.e. Exh.52 and Exh.53, it is required to be noted that the specific performance is sought for an area of 1-R land whereas the appellant admittedly owns 3-R land. Had it been an intention of present respondent to play any fraud on appellant, the respondent would have claimed execution of 3-R. Based on the same, learned trial Court and the learned lower appellate Court have proceeded to draw inference against present appellant, which in my opinion, is just and proper.

16. Apart from above, it is required to be noted that so far as the condition as regards obtaining permission from the competent authority under the Act is concerned, the provisions of Section 4 contemplates a title to be vested in a party, who prays for such regularisation. In the wake of said provisions, in my opinion, the conditional decree passed by the learned trial Court as regards application to be made for regularisation of the land is just and proper.

17. The appellate Court, while dealing with the claim of the present appellant has noted that the defendant, as having admitted her

signature on the agreement, the case of fraud as is sought to be pressed by the present appellant does not find substance in view of absence of any evidence, as that burden was not discharged by the appellant.

18. In view of above, in my opinion, no case for interference is made out. The appeal fails, stands dismissed.

19. In view of dismissal of Second Appeal, the Civil Application does not survive and same stands disposed of.

(N.W. SAMBRE, J.)

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