

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 102 OF 2013

Shri. Dada Shankar Roman (Jadhav) Appellants
& Anr.

Vs.

Tukaram Khashaba Pawar (deceased) Respondents
thru' his legal heirs Smt. Savita
Dashrath Sawant & Ors.

Mr. S.G. Rajput, Advocate for the Appellants.
Mr. Vaibhav Gaikwad, Advocate for the Respondents.

Coram : Smt. R.P. SondurBaldota, J.

Date : 14th January, 2015.

P.C.

1 The appellants are the original plaintiffs. They had filed Regular Civil Suit No. 2560 of 2001 for specific performance of agreement of sale dtd. 28th May, 1985 and for perpetual injunction to protect their possession of the suit structure. The trial court, by it's judgment and decree dtd. 31st December, 2007 refused the relief of specific performance to the appellants but directed the respondents to pay sum of Rs.35,000/- to them by way of refund of the consideration paid. Being aggrieved by the decree, both sides challenged the same by preferring appeals to the District Court. The appellants preferred

Regular Civil Appeal No.69 of 2008 and the respondents filed Regular Civil Appeal No. 183 of 2008. The District Court by its judgment and order dtd. 9th October, 2012 dismissed the appellants appeal, allowed the respondent's appeal and dismissed the suit. Therefore, the appellants have approached this court by way of Second Appeal.

2 The trial court held that the appellants had established the agreement to sell the suit property but failed to establish that the appellants were ready and willing to perform their part of the contract. Resultantly, it denied specific performance to the appellants. It also held that the appellants had failed to establish that they had been put in possession of the suit property. The appellate court reversed the finding of the trial court that the appellants had established the agreement of sale, as also payment of amount to the respondents, but confirmed the finding of the trial court as regards the possession, to dismiss the suit.

3 The appellants had alleged in the plaint that in the year 1985, the respondent was in need of money and hence had agreed, by the agreement of sale dtd. 28th May, 1985, to sell the suit property at Gat No.89, Warna Nagar, Satara admeasuring 1H., 5R for the total consideration of Rs.35,000/-. At the time of execution of the agreement for sale, the appellants had paid a sum of Rs.25,000/- to the respondents. The balance consideration was paid on 28th June, 1990. Thereafter when the appellants demanded specific performance

of the agreement, the respondents filed R.C. Suit No. 585 of 1996 for perpetual injunction against the appellants for protection of their possession of the suit land. That suit is decreed in his favour.

4 The original respondent contested the suit contending that it was barred by the Law of Limitation. He denied the agreement of sale dtd. 28th May, 1985 and payment of Rs.25,000/-. But he admitted execution of deposit receipt dtd. 28th June, 1990. According to him, the deposit receipt reflected amount of Rs.10,000/- taken by him from the appellants. He claimed to have returned the amount to the appellants by making payments from time to time. He alleged that the appellants did not return the deposit receipt to him after completion of the payment stating that the same was destroyed by them.

5 The appellate court for reversing findings of the trial court noted that the agreement of sale dtd. 28th May, 1985 produced by the appellants was on a stamp paper of Rs.5/-. The stamp paper was in the name of Ganpat Bandu Shinde. The stamp paper had been purchased by Ganpat Bandu Shinde on 5th February, 1982. Thus the stamp was not purchased by the appellant and it was not written or signed by him. The agreement did not contain description of the property to be sold. There is no mention of the agreed consideration of Rs.35,000/- in the document and there is also no mention of payment of earnest money of Rs.25,000/-. The appellants have heavily relied upon the evidence of their witness, who claimed and

deposed that he was present at the time of transaction. He deposed that the contents of the document were stated by appellant no.1 and one Ankush Nikam had scribed the document. The scribe subsequently died in an accident, but in the cross-examination, Vilas Ghadge admitted that the property was jointly held by two brothers and the vendor had only 1/2 share therein. The witness had no knowledge as regards the purchase of the stamp paper. He stated that he did not know the date of purchase of the stamp paper and that it was purchased in the name of one Ganpat. The stamp paper purchased on 5th February, 1982 was used after more than three years i.e. 28th May, 1985. This rendered the document of agreement of sale a suspicious document. The appellate court observed that the learned trial judge has wrongly appreciated evidence of the appellant and his witness and more particularly the document of agreement of sale to hold that the appellants had proved the agreement. Similarly there was no convincing evidence on record to show that on 28th May, 1998, the appellant had paid a sum of Rs.25,000/- to the respondents. These findings of the appellate court are completely supported by the material on record and hence cannot be interfered with. In the circumstances, mere production of the agreement for sale was not sufficient proof of the transaction between the parties.

6 The appellate court also noted that the claim of the appellants of being put in possession of the suit properties was false. The respondents had filed Regular Civil Suit No.585 of 1996 against

the appellants for the perpetual injunction for possession of the property by them. The suit was decreed against the appellants and they were enjoined from disturbing possession of the suit property by the respondents. There is no appeal preferred by the appellants against the decree.

7 The suit herein was filed by the appellants in the year 2001. Admittedly the transaction of sale was denied by the respondents as far back as the year 1996 by filing Regular Civil Suit No.585 of 1996, which suit was decreed against the appellants. Therefore, it is patent on record that the suit filed for specific performance was barred by the Law of Limitation.

8 Thus, there is no merit in the appeal. Perusal of the grounds of appeal shows that the grounds are either findings of fact or appreciation of evidence by the appellate court. There is also no substantial question of law arising for consideration of the court. Hence, the Second Appeal is dismissed.

(Smt. R.P. SondurBaldota, J.)