

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

SECOND APPEAL NO. 629 OF 1992

Sharnappa Sangappa Paramshetti & Anr. ... Appellants

V/s.

Digambar Dattatraya Melkunde
(Since deceased through LRs)

1(a) Vasant Digambar Melkunde & Ors. ... Respondents

.....
Mr. S. M. Dandekar, Advocate for the Appellants.
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CORAM : R. K. DESHPANDE, J.

DATED : AUGUST 6, 2015.

P.C.

The trial Court passed a decree for specific performance of contract in Civil Suit No. 177 of 1982 on 27th November, 1987. The defendant nos. 1 to 3 are directed to execute registered sale-deed in respect of plot no. 31 in favour of the plaintiff by accepting balance amount of Rs. 2,500/-, within a period of one month from the date of the order. The Lower Appellate Court has allowed Civil Appeal No. 687 of 1987 by judgment and order dated 7th August, 1991, the decree passed by the trial Court is set aside and the suit has been dismissed. The plaintiff is, therefore, before this Court in this Second Appeal.

2 On 14th December, 1992, this Court admitted the Second Appeal on the substantial questions of law framed in ground nos. 3 and 4 of the Memo of Appeal which are reproduced below:

“(3) Another question of law is Whether the Appellate Court has properly considered the provisions of Section 16(c) of the Specific Relief Act?

(4) Another question of law is Whether the Judgment and order passed by the Appellate Court reversing the decree of the Trial Court in absence of leading of any evidence or entering into the witness box by the Defendants, is legal, proper and in accordance with the provisions of law ?”

3 The case of the plaintiff was that the defendant nos. 1 to 3 entered into an oral agreement to sale the suit property which is plot no. 31 to the plaintiff for total consideration of Rs.6,000/- on 11th June, 1972. It is the specific case that out of the total amount of consideration, an amount of Rs. 2,500/- was paid by way of earnest money and the balance remained to be paid of Rs.2,500/-. The plaintiff called upon the defendants by issuing notice dated 14th July, 1982, to execute the sale – deed by accepting the balance amount of consideration which has been

replied to by the defendants on 21st July, 1982 stating that the such agreement was cancelled and notice of cancellation was issued to the plaintiff on 4th April, 1979 by under certificate of posting and it was published in the daily newspaper "*Sanchar*" on 12th May, 1979. The defendants resisted the claim for specific performance of contract urging that such contract was already cancelled. It was held that an amount of Rs. 6,500/- was paid by way of earnest money by the plaintiff to the defendants and an amount of Rs. 2,500/- remained to be paid.

4 The suit was resisting on the ground that it is barred by limitation and the contract was cancelled.

5 The trial Court has recorded findings on all issues in favour of the plaintiff whereas the Appellate Court has reversed the findings on all issues recorded by the trial Court. It is not in dispute that the case is based upon oral agreement dated 11th June, 1978 for total consideration of Rs. 6,000/- out of which the plaintiff claim to have paid an amount of Rs. 3,700/- by way of earnest money. In support of this contention the plaintiff entered the witness box and has produce the receipt dated 11th June, 1978 which shows that the payment of Rs. 500/- only. The Lower

Appellate Court has held that the payment of earnest money of Rs. 3,500/- has not been established. The Lower Appellate Court has further relied upon the admission given by the plaintiff in his cross - examination as under :-

“after a period of two months of the agreement in question, he started asking the defendants to execute registered sale-deed by accepting the remaining consideration. But they went on avoiding. It is true that suit plot was owned by all the defendants. It is true to say that, after four months of the agreement in question the defendants denied to meet to execute the registered sale-deed of suit plot though I asked them. I am a commission agent. There is a deep shock of mine. I used to read taking daily local newspapers. I do not know if the defendants has published any notice cancelling the agreement entered by them in respect of the suit plot”.

6 On the basis of such statements, the Appellant Court has that the suit in question filed on 3rd August, 1982, was barred by the law of limitation. The findings of the trial Court are influenced by the fact that the defendants have failed to enter into the witness box and to produce newspaper “*Sanchar*” dated 12th May, 1979 and the notice dated 4th April, 1979 said to have been issued to the plaintiff. The findings recorded by the Lower

Appellate Court are based on the principle that the plaintiff has to stand on his own legs and not to rely upon the weaknesses in the stand taken by the defendants. There is no evidence on record to show that an amount of Rs. 3,500/- was paid by way of earnest money. The plaintiff has admitted in his evidence that refusal to perform the contract was communicated to him within a period of four months from the date of execution of the agreement on 11th June, 1978.

7 In view of this, the Lower Appellate Court has taken a possible view of the matter which does not give rise to the substantial questions of law framed by this Court. Second Appeal is dismissed.

8 No costs.

JUDGE