

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

SECOND APPEAL NO.770 OF 2007

Shri. Kantilal Fulchand Shah Appellant

Vs.

Shri. **Vithu** Khandu Padval and Ors. Respondents

Mr. Shriram S. Kulkarni, Advocate for the Appellant.
None for the Respondents.

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

Date : 12th January, 2015.

P.C.

1 The appellant challenges the concurrent findings of the courts below on the questions of fact in the suit filed by him for specific performance of agreement of sale of immovable property. The courts below have held that though execution of the agreement of sale has been established, the appellant has failed to establish his readiness and willingness in performing his part of the contract.

2 Briefly stated the facts leading to the appeal are as follows:
Respondent no.1 is the owner of land admeasuring 18 gunthas situate at survey No.54, Hissa no.3. It is the appellant's case

that by the agreement dtd.3rd March, 1983, respondent no.1 agreed to sell the land to him for the consideration to be calculated at the rate of Rs.18,500/- per acre. At the time of execution of the agreement, earnest money of Rs.1,700/- was paid to respondent no.1. Respondents no.2 and 3 are the other co-sharers of the property. Respondent no.5 is the purchaser of the property and respondent no.6 is the name of the business of respondent no.5.

3 The defence taken by respondent no.1 to the suit was that his thumb impression was taken on the agreement by the appellant on the representation that his co-sharers are also willing to sell the suit land to the appellant. Because of that representation, respondent no.1 put his thumb impression on the agreement and also received an amount of Rs.1,700/-. This contention of respondent no.1, which has been reiterated by him in his evidence, has not been dealt with by the appellant either in his own evidence or in cross-examination of respondent no.1. There is also no material whatsoever on record regarding the extent of consideration payable to respondent no.1 and the balance of consideration payable after payment of Rs.1,700/-. The appellant, in his evidence baldly referred to his readiness and willingness to perform his part of the contract. In the absence of even specifying the extent of balance consideration payable to respondent no.1, it cannot be said that the appellant was ready and willing to perform his part of contract.

4 The other aspect of the matter considered by the courts below is that respondent no.1 was required to obtain permission of the Collector under Section 43 of Bombay Tenancy & Agricultural Lands Act. Since the father of respondent no.1 was an agricultural tenant in respect of the land in question, there is no clause in the agreement that respondent no.1 would obtain permission of the Collector, which is a mandatory condition. In view of absence of the clause therein, the lower appellate court has opined that apparently the transaction reflected in the suit agreement was some other transaction and not sale of the suit properties.

5 Mr. Kulkarni submits that this inference drawn by the lower appellate court is not at all supported by the material on record. Therefore, substantial question of law would arise for consideration of this court in the appeal.

6 Firstly respondent no.1 took up specific defence that his thumb impression on the agreement was taken by the appellant by resorting to mis-representation. Respondent no.1 also claims to be an illiterate person. In the circumstances, it was necessary for the appellant to produce sufficient evidence on the fact of execution of the agreement of sale. Not only no such evidence was produced by the appellant but the evidence of respondent no.1 as regards the mis-representation was not even refuted. Therefore, in my opinion, the findings of the courts below are justified and there is no substantial

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question of law arising for consideration of this court. Hence, the Second Appeal is dismissed.

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

Note : Order is corrected as per speaking to minutes order dated 14th October 2022.

BHALCHANDRA
GOPAL DUSANE

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