

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

SECOND APPEAL NO.77 OF 2014

Shri Sanjay Dattatraya Jadhav
Age 46 years, occ. Agriculture & Business
R/o. Sinnar-Shirdi Road,
At Post Sinnar, Dist. Nasik

.. Appellant.
(Org. Plaintiff.)

V/s

Shri Mhalu Doram Sabale
Age 67 years, occ. Agriculture
R/o. At Bhokari, Post. Khamble,
Taluka Sinnar, Dist. Nashik

..Respondent
Org.Defendant)

Mr. Sagar Joshi, advocate for Appellant.
Mr. Nikhil Pujari h/f Mr. P.N. Joshi, for Respondent.

Coram : Smt. R.P SondurBaldota, J.
Date : 11th March, 2015

P.C.

The appellant who is original plaintiff, had filed the Special Civil Suit No.217 of 2005 for specific performance of the agreement of sale dated 11th June, 1997. The Trial court by its judgment and decree dated 15th December, 2008 partly decreed suit granting alternative relief sought by the appellant of return of

advance amount with interest. It denied the relief of specific performance to the appellant on the ground that the appellant had failed to establish that at the relevant time, the property sought to be transferred under the sale deed was transferable. The suit property was not transferable since it was reserved for MIDC. Being aggrieved by the order, appellant approached the District Court at Nasik by filing Civil Appeal No.47 of 2009. By its judgment and order dated 24th January, 2012, the District Court dismissed the appeal, holding that the Trial Court has rightly held that in the absence of cogent evidence about the removal of the reservation of MIDC from the suit property, the appellant was not entitled for the execution of the sale deed of the suit property in his favour. It is contended on behalf of the appellant that there was sufficient evidence before the Courts below to establish that reservation had been lifted. The appellant have produced the evidence of several transaction of sale of surrounding lands in the form of mutations of revenue records. The Appellate court has held that this evidence produced is not sufficient and cogent. The Appellate Court was of the view that there ought to have been a direct evidence produced by the appellant to establish that reservation on the suit land for MIDC has been lifted and that

the same is available for transfer. The view taken by the Court below is correct. Beside the relief of grant of specific performance is a discretionary relief. As long as the same has been judiciously exercised, there can be no interference with it. In the circumstance, there is no substantial question of law arising for the consideration. Hence, the appeal is dismissed.

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