

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
(Civil Appellate Jurisdiction)**

SECOND APPEAL NO. 540 OF 2010

(Shri Shamrao Kundlik Bhosale vrs Shri Bhagwan Jagannath Bhise (deceased) (deleted) and Shri Ramesh Bhagwan Bhise	Appellant Respondents)
---	---

Mr. Dilip Bodake, Advocate, for appellant
Mr. Prafulla B. Shah, Advocate, for respondent No.2

**CORAM : R.K.Deshpande, J.
DATED : 16th JUNE, 2015.**

The trial Court partly decreed Special Civil Suit No. 137 of 2002 for specific performance of contract and grant of permanent injunction restraining the defendant from interfering with the possession of the plaintiff over the suit property. The claim for specific performance was dismissed, but injunction was granted by the trial Court restraining the defendant from disturbing the possession of the plaintiff over the suit property without following due process of law. Both the parties preferred separate appeals i.e. Regular Civil Appeal Nos. 22 of 2006 and 28 of 2006. By common judgment and order dated 01.07.2010, the appellate Court has allowed the appeal filed by the defendant and set aside the decree passed by the trial Court. The appeal filed by the plaintiff has been dismissed on 01.07.2010. Hence, this second appeal is preferred by the original plaintiff before this Court.

The claim of the plaintiff was based upon an agreement to sell dated 23.03.1979 at Exh.51. The plaintiff claimed to be in possession of the property by way of part performance of contract. Though the trial Court has recorded the finding that the plaintiff has proved the possession over the suit property, the claim for specific performance was rejected. The appellate Court has held that there is no evidence on record to show that the plaintiff was in possession of the property by way of part performance of contract.

I have gone through the agreement dated 23.03 1979 at Exh.51. The document is totally illegible and it is not possible to ascertain from it as to whether the plaintiff was put in possession of the property under the agreement itself. From the alleged date of agreement i.e. 23.03.1979 till 2002, there is no revenue document placed on record to show the possession of the plaintiff over the suit property.

In view of this, the appellate Court has taken a possible view of the matter holding that the plaintiff has failed to establish the possession over the suit property. No substantial question of law arises. Second appeal is dismissed. Consequently, the civil application 1410 of 2010 stands dismissed.

(R.K.DESHPANDE, J.)