

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

SECOND APPEAL NO. 736 of 2010

Sou. Indubai Shamgonda Patil,
aged 46 years, Occ. Household,
resident of Ichalkaranji, Taluka
Hatkanangale, Distt. Kolhapur

..

APPELLANT

.. **Versus** ..

- 1] Shri Raoso Shankar Sutar,
age 56 years, Occ. Carpenter,
resident of Kabnoor, Chandur Road,
Tal. Hatkanangale, Distt. Kolhapur
- 2] Shri Chintu Babu Sutar,
deceased since through his L.Rs
- A] Smt. Shantabai Chintu Sutar,
age 71 years, Occ. Household,
R/o. Sutarmala, Kolhapur Road,
Kabnoor, Tal. Hatkanangale, Distt. Kolhapur
- B] Sou. Mahadev Sanjay Sutar,
age 45 years, Occ. Household,
R/o. As above.
- 3] Sou. Gangubai Antu Sutar,
age 71 years, Occ. Household,
R/o. Ankali, Tal. Miraj, Distt. Sangli,
- 4] Shri Ajit Antu Sutar,
age 46 years, Occ. Carpenter,
R/o. As above.
- 5] Shri Dilip Antu Sutar,
age 38 years, Occ. Carpenter,
R/o. As above.

- 6] Sou. Ranjana Rajaram Sutar,
age 46 years, Occ. Household,
R/o. C/o. Rajaram V. Sutar,
Sutar Society, Kabnoor, Deccan Road,
Tal. Hatkanangale, Distt. Kolhapur
 - 7] Sou. Mangal Balaso Sutar,
Age 46 years, Occ. Household,
Resident of Talandage,
Tal. Hatkanangale, Distt. Kolhapur
 - 8] Sou. Ujwala Sarjerao Sutar,
age 49 years, Occ. Household,
R/o. C/o. Mohan Sutar, Alate,
Tal. Hatkanangale, Distt. Kolhapur
 - 9] Shri Bhupal Namdeo Sutar,
age 61 years, Occ. Carpenter,
R/o. Sutarmala, Kohlapur Road,
Kabnoor, Tal. Hatkanangale, Distt. Kolhapur
 - 10] Sou. Chabutai Tukaram Sutar,
age 42 years, Occ. Household,
R/o. W.No. 10, Near Raghveer Sizing,
Near Shivecha Maruti Mandir,
Tal. Hatkanangale, Distt. Kolhapur
 - 11] Sou. Hirabai Mahadeo Kesarkar,
age 56 years, Occ. Household,
R/o. Kabnoor, Kulkarni Mala,
Tal. Hatkanangale, Distt. Kolhapur ..
- RESPONDENTS**

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Mr. N.J.Patil, Advocate, for appellant.
Mr. D.V.Sutar, Advocate for Respondent Nos. 1, 2A, 2B, 3 to 9

CORAM : R.K.Deshpande, J.
DATED : 09th JUNE, 2015.

ORAL JUDGMENT

1] The original plaintiff is before this Court challenging the judgment and decree passed on 27.07.2010 by the learned District Judge-1, Ichalkaranji, in Regular Civil Appeal No. 14 of 2010. The appeal preferred by the original defendants No. 1 to 10 has been allowed and the suit for specific performance of contract dated 28.05.1993 has been dismissed. Undisputedly, the trial Court passed a decree for specific performance of contract against the defendants No. 1 to 10 and it refuses to pass a decree for specific performance of contract against the defendant No.11 solely on the ground that she was not party or signatory to the agreement.

2] On 8th July, 2014, this court had passed an order as under;

Issue notices to the respondents for final disposal of the matter on the following substantial question of law.

1. Whether the judgment delivered by the lower appellate Court in the regular civil appeal No. 14 of 2009 stands vitiated, on account of non application of mind in various findings recorded by the trial Court on the issues framed, requiring remand of the matter back to the appellate Court for decision afresh in accordance with law?

The learned counsel for respondent Nos. 1, 2A, 2B and 3 to 9 waives service of notices. The other respondents be served by R.P.A.D in addition to regular mode of service.

The notices be made returnable on 2nd September, 2014.

The paper book filed by the learned counsel for the appellant is taken on record.

3] The trial court has passed a decree for specific performance of contract in favour of the plaintiff and against the defendant Nos. 1 to 10. The trial Court refused to grant a decree for specific performance of contract against the defendant NO. 11 on the ground that he was not a party or signatory to the contract dated 28.05.1993. The appellate Court has, however, passed a decree for specific performance of contract against all the defendants in ignorance of the finding of the trial court that the defendant no. 11 was neither a signatory to the agreement nor a party to the agreement. The decision of the appellate Court, therefore, suffers from non application of mind to the relevant aspects of the matter. The substantial question of law is, therefore, answered accordingly. The judgment and decree passed by the appellate Court will have, therefore, to be set aside along with the order of remand.

4] In the result, the second appeal is allowed. The judgment and decree passed by the lower Appellate Court on 27.07.2010 in Regular Civil Appeal No. 14 of 2010 is hereby quashed and set aside. The matter is remitted back to the

lower appellate Court to decide the same in accordance with law keeping in view the observations made by this Court. Needless to say that this Court has not recorded any finding on the merits of the controversy involved in the matter, but the judgment and order of the lower appellate Court is set aside merely on the ground that it suffers from the non application of mind.

The parties to appear before the lower Appellate Court on 13th July, 2015. The lower Appellate Court to decide the appeal within a period of 8 weeks thereafter.

(R.K.Deshpande, J.)

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Rvjalit/P.A.