

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

SECOND APPEAL NO. 64 OF 2015

1. Shri Chandpeer S. Inamdar
age 60 years, occ. Advocate
R/at Bijapur, Karnataka State

2. Shri. Sultan Akhtar Husain Inamdar
age 28 years, occ. Business
R/at Flat No.401, 4th Floor,
Asma Apartment, House No.227,
4th Nizampura, Bhiwandi,
Dist. Thane..

3. Shri Naeem Amir Saheb Bahauddin
Age 49 years, occ. Business.
R/at Flat No...., 2nd Nizampura,
Near Beech Ki Masjid, Bhiwandi,
Dist. Thane

.. Appellants.

(Orig. Defendant Nos. 1 to 3)

V/s

Shri Sohel Baquar Patel
Age 61 years, occ. Advocate.
R/at 432-A, IVth Nizampura,
Patel Mohalla, Bhiwandi, Dist. Thane

.. Respondent
(Orig. Plaintiff)

Mr. T.S. Ingale, for appellants.
Mr. R.D. Suryawanshi, for respondent.

**Coram : Smt. R.P SondurBaldota, J.
Date : 17th February, 2015**

P.C.

1. The appellants are the original defendants and the respondent is the original plaintiff. The appellants challenge the concurrent findings of the Courts below in the suit for specific performance of agreement for sale dated 29th December, 2010, executed by appellant No.1 in favour of the respondent and the reliefs ancillary thereto. The other relief sought by the respondent was of cancellation of subsequent agreement dated 25th June, 2011 between appellant No.1 and appellant No.3.

2. By the agreement of sale dated 29th December, 2010 appellant No.1 agreed to sell the suit flat to the respondent for the consideration of Rs.7,00,000/-. The respondent paid earnest money of Rs.1,00,000/- and was put in possession on 06th April, 2011. Later appellant No.1 on 26th May, 2011 informed the respondent that he was no more interested in selling the flat and offered to return the earnest money. Appellant No.1 also threatened to take forcible possession of the flat. The respondent, therefore, filed the suit on 06th June, 2011. During the pendency of the suit, on 27th June, 2011, appellant No.1 broke open the suit flat and inducted

appellant No.2, his son-in-law.

3. Appellant No.1 contested the suit alleging that in the month of May, 2011, the respondent refused to purchase the flat on the ground that it was on the fourth floor and the building had no lift facility. Therefore, on 25th May, 2011, appellant No.1 sent advocate's notice cancelling the agreement of sale. He denied handing over of possession to the respondent and claimed that his daughter, son-in-law and her mother-in-law were residing in the flat. Then because he was in need of money he entered into agreement of sale dated 25th June, 2011 to sell the suit flat to appellant No.3 for the consideration of Rs.6,50,000/- and accepted the earnest amount of Rs.3,00,000/-. Appellant No.3 claimed that he was bona-fide purchaser without knowledge of the prior agreement.

4. The Trial Court, by its judgment and order dated 1st April, 2013 held that there was agreement of sale by appellant No.1 of the suit property to the respondent and the respondent established that he was ready and willing to perform his part of contract. The respondent established that appellant No.1 had failed to perform his part of contract and as such, he was entitled for the relief of specific performance. The Trial Court also held that appellant No.1 failed to

establish that by notice dated 25th May, 2011, the agreement to sell dtd. 29.10.2010, stood cancelled. These findings have been confirmed by the District Court by judgment and order dated 07th October, 2014.

5. Mr. Ingale, the learned advocate for the appellants submits that the Courts below failed to appreciate that it was necessary for the respondent to seek declaratory relief that agreement dated 29th December, 2010 is subsisting for the purpose of specific performance. According to him, in the absence of such relief, suit for specific performance was not maintainable. In this connection, he relies upon the decision of the Apex Court in *I.S. Sikandar (Dead) by L Rs. Vs. K. Subramani and ors, (2013) 15 Supreme Court Cases, page 27*.

6. In the proceedings before the Apex Court the plaintiff in the suit for specific performance had agreed to pay the balance consideration within five months from the date of the agreement. On expiry of that period, the defendant had sent legal notice calling upon the plaintiff to perform his part of the contract and complete the transaction. The plaintiff replied admitting his default in performing his part of the contract after which by another notice the

agreement was terminated. In these facts the court had held that there was termination of the contract with effect from the date of the second notice. Therefore, the Apex Court observed as follows :-

37. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of the agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the on the basis of non-existing agreement of sale is wholly unsustainable in law.

7. In the facts of the case on hand there is concurrent finding of the fact that the suit agreement was not cancelled by the notice dated 25th May, 2011. In other words the agreement on the date of filing of the suit was in subsistence. Therefore, the suit for its

specific performance was maintainable. The record shows that concurrent findings of the facts are supported by it. Also there is no substantial question of law arising from it. Hence, the Second Appeal is dismissed.

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

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

**CIVIL APPLICATION NO.133 OF 2015
IN
SECOND APPEAL NO. 64 OF 2015**

Shri Chandpeer S. Inamdar and ors. .. Applicants.
V/s
Shri Sohel Baquar Patel .. Respondent.

Mr. T.S. Ingale, for applicants.
Mr. R.D. Suryawanshi, for respondent.

**Coram : Smt. R.P SondurBaldota, J.
Date : 17th February, 2015**

P.C.

In view of dismissal of Second Appeal, this civil application does not survive and same is disposed of.

(Smt. R.P SondurBaldota, J.)