

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO 1059 OF 2012

The Chairman
Hanuman Gramin Bigar Sheti Sahakari
Pat Sanstha Maryadit, Kotoli
Taluka Panhala
District Kolhapur

Appellant
(org. Defendant No. 3)

Vs

1 Shri Tukaram Subu Chougule
since deceased through his legal heirs

(a) Vasant Tukaram Chougule

(b) Kisan Tukaram Chougule

(c) Bajirao Tukaram Chougule

(d) Ratnabai Tukaram Shelar

(e) Housabai Tukaram Chougule

Now deceased

Nos. 1(a) to 1(d) residing at Kotoli,
Taluka Panhala, District : Kolhapur

2 Joti Gundu Kumbhar
Since deceased through his legal heirs

(a) Rama Joti Kumbhar
Residing at Kotoli, Taluka
Panhala, District : Kolhapur

Respondents (Resp. No.
1 – Org. Plaintiff, Resp
No. 2 – Org. Defendant
No.2)

Mr. P. D. Dalvi for appellant.

Mr Tushar Limbajirao Pimple for respondent.

CORAM : R. K. DESHPANDE, J.
DATE : 3rd AUGUST, 2015

P.C. :

1. The trial court dismissed the Regular Civil Suit No.77 of 1986 for specific performance of contract. In Regular Civil Appeal No.229 of 2007, the Lower Appellate Court has set aside the judgment of trial Court and a decree for specific performance has been passed in favour of the plaintiff on 28/9/2012. Therefore, the Original Defendant No.3 is before this court in the Second Appeal.

2. Undisputedly, the defendant No.1 agreed to sell the suit property to the plaintiffs on 20/2/1982. The suit was filed on 6/9/1986 for specific performance of contract. Initially it was dismissed on 15/11/1995 under Order 9 Rule 8 of Civil Procedure Code. After dismissal of the suit the defendant no.1 executed the sale deed on 4/6/2001 in favour of defendant no.3. The application for restoration of the suit was allowed on 25/9/2001 by the trial Court. At that time defendant no. 3 being subsequent purchaser of the property was joined in the suit.

3. The appellant has urged that on the date of filing of the suit, the Civil Judge Junior Division had no pecuniary

jurisdiction to entertain, try and decide the suit in question. The lower appellate Court has accepted this contention but it is held that due to subsequent enhancement in the pecuniary jurisdiction, the suit in question was triable by the Court of Civil Judge Junior Division.

4. There cannot be any dispute that even if the decree passed suffers from lack of pecuniary jurisdiction, it does not become void. On the contrary, the decision of this court in case of *“Fazelhussein Haiderbhoy Buxamusa and others v. Yusufally Adamji and others”*¹ cited by the learned counsel for the appellant, clearly holds that subsequent changes in law can always be taken into consideration. No substantial question of law arises.

5. The learned counsel for the appellant has alleged that appellant/defendant no. 3 is a society, registered under Maharashtra Co-operative Societies Act, 1960 and therefore notice u/s 164 therein was necessary, before institution of the suit against the Co-operative Society. The learned counsel concedes to the position that such point was not raised in the written statement nor any issue was framed by the trial Court. Similarly,

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another point raised by the learned counsel regarding permission to purchase suit property does not give rise to any substantial question of law.

6. The learned counsel for the appellant has referred to the finding recorded by the trial court in Para 28, on the provision of section 164 of the Maharashtra Co-operative Societies Act, 1960. The trial Court has held that it is not a case touching the business of Society and hence such a notice under section 164 is not required. Obviously the suit is for specific performance of contract against the defendant Nos.1 and 2 who are individuals. It is during the period when the suit was dismissed, the sale deed in question was executed on 4/6/2001. It is the relief consequential to the grant on specific performance of contract and hence notice under section 164 was not necessary.

7. The second appeal is dismissed.

(R. K. DESHPANDE, J.)