

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No. 418 of 2012
Pochu v. Suresh and ors

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.

Court's or Judge's orders.

Ms Meenaxi Iyre, Adv for appellants
 Ms Kirti Satpute, Adv for respondents

CORAM : A.V. NIRGUDE, J

DATED : 6th April 2015

1. Heard learned counsel for the parties. Second Appeal challenges concurrent findings of the Courts below. Both the Courts held that the appellant/defendant was duty-bound to abide by the agreement which he had executed in favour of plaintiffs/respondents. This was suit for specific performance of contract and the Courts below held that the respondents proved not only the agreement, but their readiness and willingness to perform their part of contract.

2. Learned counsel for the appellant at this stage tried to convince me that her client did not get sufficient opportunity to show that the suit agreement was a forgery. She was trying to tell me that a fresh application was moved by her client to the appellate

Court whereby a request was made to refer the document in question to an expert for his opinion. Such a request was not granted. Indeed, if at all the appellant/defendant wanted to contradict the case that he had executed a document, he ought to have moved such application at the lower most stage. An opportunity was available to him. If he wasted that opportunity, there is no possibility for the Courts now to re-examine the case once again. Appellant/defendant lost that opportunity. This Court at this stage is unable to help him.

3. In any case, after I went through the judgments of the Courts below, I found that for proving the defence, there was no need to prove any further document. It was the case of respondents/plaintiffs that agreement was executed and immediately almost entire consideration was passed over to the appellant/defendant. Admittedly, respondents/plaintiffs were even put in possession. The appellant/defendant took up a stand that he handed over possession of suit land to the other party on "Batai" basis and not pursuant to agreement for sale. The Courts below rejected this story altogether. Now, learned counsel for appellant is trying to suggest that respondent/plaintiff took forcible possession. This was never her case before the lower Court. There does not appear any substantial question of law arising in

this appeal. Appeal is accordingly dismissed. No costs.

JUDGE

joshi