

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

SECOND APPEAL NO.80/2012

Mahadeo s/o Shankar Sontakke

..Versus..

Gopal s/o Gajanan Sagdeo (deleted) and others

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 18.11.2015

Heard Shri S.S. Joshi, advocate for the appellant and Shri P.R. Agrawal, advocate for respondents 2, 3 and 5.

The appellant had filed the civil suit praying for decree for specific performance which has been dismissed on the ground that the findings recorded in the judgment given in Civil Suit No.92/1970 operates as *res judicata*. The judgment and decree passed by the trial Court was challenged before the District Judge in appeal which is also dismissed. The appellant being aggrieved by the judgment and decree passed by the subordinate Courts has filed this appeal.

It is undisputed that Shri Gajanan executed an earnest deed in favour of the appellant on 9th April, 1969 agreeing to sell the suit land. According to the earnest deed, the sale deed was to be executed on or

before 5th April, 1970. As the sale deed was not got executed by the appellant, Shri Gajanan had filed Civil Suit No.92/1970 seeking decree for possession of the suit field. This civil suit was decreed in favour of Shri Gajanan. One of the issue which was framed read as follows:

“Does he further prove that it is plaintiff who avoided to execute the sale deed and as such no right to claim possession on the plea that sale deed stands cancelled ?”

The trial Court answered this issue against the present appellant holding that the present appellant who was defendant in Civil Suit No.92/1970 was not ready and willing to get the sale deed executed. The judgment and decree passed in Civil Suit No.92/1970 attained finality. The subordinate Courts have properly appreciated the facts and have rightly held that the findings given in Civil Suit No.92/1970 operates as *res judicata* and in view of the finding the appellant is not entitled for decree for specific performance. The appeal does not raise any substantial question of law which requires consideration. The appeal is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE