

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

Second Appeal No. 494 of 2014
Kumud v. Ghanshyam and anr

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

Court's or Judge's orders.

Mr Prashant Gode, Advocate for
appellant

Mr Ravi Pande, Advocate h/f Mr S. P.
Bhandarkar, Adv for respondent no.1

CORAM : A.V. NIRGUDE, J

DATED : 16th April 2015

1. This second appeal mainly challenges judgment of the lower Appellate Court. The appellant is subsequent purchaser in a suit for specific performance of contract. In view of this, Section 19 of the Specific Relief Act requires him to prove that he is a bonafide purchaser. The trial Court said that appellant could prove his bonafides, but the learned Judge of the lower Appellate Court felt otherwise. One of the most glaring reasons as to why the appellant was held not bonafide is a fact that he agreed to purchase the property for almost 50% less price than the one agreed between the parties to the suit.

2. The judgment of the lower Appellate Court appears quite reasonable. Appreciation of evidence is already done properly. At second appellate stage, re-

appreciation of evidence is always not permissible. I am unable to find out any substantial question of law arising in this appeal.

3. Learned counsel for appellant placed reliance on the Division Bench judgment of the Calcutta High Court in the case of **Hiralal Agarwala v. Bhagirathi Gore & ors** reported in **AIR 1975 Calcutta 445**. In this judgment, the Calcutta High Court held that merely showing the difference in price between the two sale deeds relating to the same property, executed at different times, it cannot be said that the subsequent purchase at a reduced price must be collusive and as such it cannot be said to be a bona fide one. It is further held that on the contrary, the mala fide purchaser generally inflates the price. The facts of this case are not conducive of taking similar view. The agreement between the other two parties to the suit was executed in January 2008 and almost 1/3rd purchase price was handed over the seller. Certain time-limit was put in the agreement. Since the transaction was not completed within that time, apparently the seller sold the land again to a third party who is the appellant here in May 2008. In July 2008, the suit was filed. All these events took place quite quickly. I am unable to take a view that this case requires re-consideration of evidence. There is no perversity in appreciation of evidence by the learned lower Appellate Court.

4. No substantial question of law arises in the appeal. Appeal stands dismissed accordingly. No costs.

JUDGE

joshi