

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

907 SECOND APPEAL NO. 471 OF 2016
WITH CA/9881/2016 IN SA/471/2016

REKHA MURLIDHAR PATIL
VERSUS
SURESH BHAGVAT MAHAJAN

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Advocate for Appellant : Patil Vinod Prakash
Advocate for Respondent : Patil Prakashsing B.
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CORAM : T.V. NALAWADE, J.
DATED : 15th July, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Special Civil Suit No. 171/2008, which was pending in the Court of Civil Judge, Senior Division, Jalgaon and also the judgment and decree of Regular Civil Appeal No. 616/2014, which was pending in the Court of District Judge-2, Bhusawal, District Jalgaon. The suit filed against present appellant for relief of specific performance of contract of sale of agricultural land is decided against the appellant. Both the sides are heard.

2. It is the case of respondent, plaintiff that under agreement dated 26.7.2005 defendant agreed to sell the suit property which is 69.66 R. portion of Gat No. 51/1 situated at village Savatar, Tahsil Bhusawal to the plaintiff. It is contended

that out of the agreed consideration of Rs. 1.75 lakh, amount of Rs. 1.5 lakh was paid to the defendant before Sub-Registrar and the agreement was registered on the same date. It is contended that the transaction was to be completed on or before 30.11.2006. It is contended that plaintiff gave notice to defendant, asking him to perform his part of contract on 19.6.2006 and also on 30.9.2006, but defendant did not respond and avoided to execute the sale deed. It is the case of plaintiff that he was ready and willing to perform his part of contract, but defendant avoided to execute the sale deed and so, the suit was required to be filed.

3. The defendant filed written statement. He admitted that the agreement was made, but she contended that it was security transaction and loan of Rs. 1.25 lakh was taken. It is contended that the defendant had agreed to pay interest at the rate of 3% p.m. and accordingly, she paid interest to the plaintiff. It is contended that on one occasion in the year 2006, the amount of Rs. 38,000/- was paid through sugar factory where sugarcane was supplied by defendant. It is contended that plaintiff is misusing the document as he wants to extract more amount and he has demanded Rs. 2.5 lakh for cancelling the transaction.

4. On the basis of aforesaid pleading, issues were framed. Both the sides gave evidence. The Trial Court held that it was agreement of sale and the defendant failed to prove that it was a loan transaction. The Trial Court held that plaintiff was ready and willing to perform his part of the contract and the direction was given to execute the sale deed after accepting Rs. 25,000/-, remaining consideration from plaintiff. These findings are confirmed by the First Appellate Court.

5. The reasoning given by the Courts below show that execution of the document and the receipt of the amount before Sub-Registrar was not disputed by the defendant. It is her case that there was parallel oral agreement that interest was to be paid by defendant to plaintiff on the aforesaid amount and the property was not to be sold to plaintiff. The defendant examined herself and she examined her husband. She examined one employee of sugar factory to show that some amount was paid by sugar factory to the wife of plaintiff.

6. It can be said that only oral evidence is available in support of the case of oral agreement with defendant Exh. 52, the record of payment of amount of Rs. 20,958/- to the wife of

plaintiff by the sugar factory is one circumstance. The payment was made on 2.12.2006. Evidence is given that this payment was in respect of sugarcane supplied to sugar factory in respect of land Gat No. 8 which was in the name of defendant.

7. The discussion of the evidence made by the Courts below show that the defendant admitted that the notices dated 19.6.2006 and 30.9.2006 were received by her. As against this, there is circumstance like on 2.12.2006 amount of Rs. 20,958/- was paid to the wife of plaintiff by the aforesaid sugar factory. The Courts below have held that this payment cannot be treated as payment of interest made by defendant to plaintiff as anybody can supply sugarcane to the factory as gate cane. There is no record to show that the sugarcane was actually supplied by defendant or her husband and application was given to the factory to pay the price of sugarcane to the wife of plaintiff. These concurrent findings are on questions of facts.

8. Thus, on one hand, there is registered agreement of sale in favour of plaintiff showing that most part of the consideration was paid to defendant and on the other hand, there is defence of oral agreement of aforesaid nature from defendant. There is one more circumstance that defendant did

not feel it necessary to reply the notices given by plaintiff. In view of these circumstances, not much was required to be done by plaintiff to prove the readiness and willing. There was no other alternative then to give decree of specific performance in favour of plaintiff. There are concurrent findings on facts and this Court holds that no substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

SSC/