

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

904 SECOND APPEAL NO. 742 OF 2015
WITH CA/16311/2015 IN SA/742/2015

PANDHARI VITTHALRAO MUNDE
VERSUS
DATTATRAYA MANIKRAO DAHIPHALE AND ANR

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Advocate for Appellants : Suryawanshi Prashant D.
Advocate for Respondent 1 : S.D. Munde
Advocate for Respondent 2 : A.R. Tapse h/f. M.D. Narwadkar
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CORAM : T.V. NALAWADE, J.
DATED : 28th June, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No. 96/2000, which was pending in the Court of Civil Judge, Junior Division, Parli-Vaijinath and to challenge the judgment and decree of Regular Civil Appeal No. 65/2006, which was pending in District Court, Ambajogai. The suit filed for relief of specific performance of contract of sale of immovable property is decreed in favour of present respondent No. 1. Heard both the sides.

2. It is the case of respondent No. 1, plaintiff that defendant No. 1 - Bhaskar, present respondent No. 2 was the owner of plot No. 101, which is part and parcel of Survey No. 11, situated at Jalalpur, Someshwar Nagar, Parli-Vaijinath. It is the case of plaintiff that defendant No. 1 had agreed to sell this plot

to plaintiff for consideration of RS. 35,000/- and agreement was executed in that regard on 31.7.1999 on stamp paper. It is contended that on the day of agreement, amount of Rs. 30,000/- was paid by plaintiff to defendant No. 1 as earnest money and plaintiff was put in possession of the suit plot. It is the case of plaintiff that the remaining amount of Rs. 5,000/- was to be paid by him and after making payment of that amount, sale deed was to be executed by defendant No. 1 in favour of plaintiff. It is the case of plaintiff that he was always ready and willing to pay the remaining amount of consideration and get executed the sale deed, but defendant No. 1 refused to perform his part of the contract. It is contended that on 28.4.2000 oral request was made and then notice was sent by R.P.A.D. on 29.4.2000. It is contended that the said notice was duly served on defendant No. 1, but he did not reply the notice. It is contended that again attempt was made on 2.5.2000 to convince defendant No. 1, but defendant No. 1 refused to execute the sale deed. The suit was filed on 6.2.2000. Initially the suit was decreed as defendant - Bhaskar did not appear and ex parte decree was given. This decree was challenged by present appellant - Pandhari and then matter was remanded back to the Trial Court. After remand, both the sides gave evidence and the suit is again decreed in favour of Dattatraya.

3. It is the case of present appellant, defendant No. 2 that he purchased the suit land from defendant No. 1 after making reasonable inquiry about ownership under sale deed dated 11.10.1999. It is contended that consideration of Rs. 7,000/- was paid by him and on the date of sale deed, he was put in possession by defendant No. 1. Defendant No. 1 also filed written statement and he contended that he has not executed any agreement of sale in favour of plaintiff. He denied that he has received Rs. 30,000/- as part of consideration and he had given possession of the suit property to the plaintiff.

4. Issues were framed on the basis of aforesaid pleadings. On the basis of oral and documentary evidence, the Courts below have held that the plaintiff has proved that there was agreement of sale in his favour and on 31.7.1999 after accepting part of consideration, he was put in possession by defendant No. 1. The Courts below have held that defendant No. 2, present appellant failed to prove that he was bona-fide purchaser for valuable consideration without notice.

5. For proving the execution of the agreement of sale dated 31.7.1999, plaintiff examined real brother of defendant

No. 1 and father of defendant No. 1. In their evidence, the execution is proved and even passing of consideration of Rs. 30,000/- from plaintiff to defendant No. 1 is proved. The agreement is given exhibit as 69 and separate receipt of the amount is proved as Exh. 70. The First Appellate Court has taken care to see that the agreement which was written on insufficient stamp paper is impounded and penalty is recovered from the plaintiff.

6. When aforesaid two documents were proved and passing of consideration was also proved, the burden was on defendant Nos. 1 and 2 to prove that these documents were forged, they were not bearing signatures of defendant No. 1. No attempt was made to prove the forgery. The Courts below have believed the two witnesses examined by the plaintiff by observing that there was no reason for them to give false evidence against defendant No. 1. This Court is not expected to interfere in such finding.

7. The present appellant placed reliance mainly on the sale deed, mutation made on the basis of sale deed in property card, permission granted by Local Body to make construction and evidence given that one tin shed was in existence on the

plot. When there is registered sale deed, the other things like mutation, granting of permission by Local Body follow. On that basis, no inference can be drawn that possession was actually handed over under sale deed.

8. Surprisingly, defendant No. 2, the present appellant did not take specific defence of bonafide purchaser. The sale deed was executed in his favour by defendant No. 1 on 11.10.1999 and that too, for meager consideration of Rs. 7,000/-. The previous agreement was for consideration of Rs. 35,000/-. The evidence shows that the appellant did not make inquiry even with father and brother of the vendor when they are Hindus. No Public notice was given to take care and see that that any other person had no interest in the property. Due to these circumstances, the Courts below have held that the agreement is binding both on defendant Nos. 1 and 2. These are the findings on facts. 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.]

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