

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 99 OF 2016

SHRI. BALKRISHNA VINAYAK NAIK AND
3 ORS.,

... Appellants

Versus

SHRI. TUKARAM SHANKAR KANDOLKAR
(DEC) REP. BY HIS LRS. AND 20
ORS.,

... Respondents

Mr. Venkatesh Ameya Nayak Salatry, Advocate for the appellants.

Coram:- F. M. REIS, J.

Date:- 16th September, 2016

P.C.

Heard Mr. V. Salatry, learned counsel appearing for the appellants.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the appellants for specific performance of an oral agreement came to be dismissed.

3. Mr. Salatry, learned counsel appearing for the appellants has vehemently pointed out that both the Courts below have misconstrued the evidence on record as well as the admission on the part of the respondent nos. 1, 3 and 5 regarding the existence of an oral agreement with the respondent nos. 12, 15, 17 and 21. The learned counsel further pointed out that though the appellants along

with the said respondent nos. 12, 15, 17 and 21 had jointly agreed to purchase the subject property, the sale deed came to be executed only by the respondent nos. 1 to 11 in favour of the said respondent nos. 12, 15, 17 and 21 excluding the appellants. The learned counsel further pointed out that the material on record suggest that even the appellants had contributed towards the initial amount paid on the basis of an oral agreement and consequently, the Courts below were not justified to refuse the relief of specific performance. The learned counsel has brought to my notice the written statement filed by the respondent nos. 1, 3 and 5 to point out that there is a categorical admission about the existence of an oral agreement and as such the Courts below were not justified to come to the conclusion that the appellants are not entitled for specific performance of contract. The learned counsel has extensively taken me through the judgments of the learned Trial Judge as well as the Appellate Court to point out that both the Courts below have misconstrued the evidence as well as the documentary evidence produced by the appellants which conclusively establish the existence of the oral agreement and consequently, the impugned judgments deserve to be quashed and set aside.

4. I have carefully considered the submissions of the learned counsel and I have also gone through the records. The fact remains that though it is contended by the appellants about the existence of an oral agreement between the appellants and the respondent nos. 1, 3

and 5 nevertheless, it is not disputed that the subject property belongs to the respondent nos. 1 to 11. Admittedly, as far as the other respondents are concerned, the appellants did not have any agreement with such co-owners. The fact that the property belongs to all the respondent nos. 1 to 11 also is not disputed. The learned Lower Appellate Court while examining this aspect has taken note of the relevant provisions of law to point out that one co-owner cannot dispose of specifically the property without the consent of the other co-owners. On perusal of the plaint, there is nothing to suggest that the respondent nos. 1, 3 and 5 had entered into the oral agreement in question at the instance of the other co-owners. On the face of these admitted position, the findings of the Courts below that the appellants are not entitled for specific performance stands justified.

5. With regard to the contention of the learned counsel appearing for the appellants that the appellants were also co-purchasers of such property, I find that such dispute, if any, can be raised with the other co-purchasers. Considering that the appellants admittedly do not have any agreement with all the co-owners of the subject property, I find no interference is called for in the present Second Appeal. The learned Lower Appellate Court has rightly appreciated the evidence on record and the material to come to the conclusion that the appellants are not entitled for specific performance of the contract. In fact, the appellants were not even justified to make the other co-owners as parties to the suit as admittedly they were not parties to

the oral agreement in question. In such circumstances, I find that there are no substantial questions of law which arise in the present appeal for consideration. Consequently, the appeal stands accordingly rejected.

F. M. REIS, J.

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