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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.495 OF 2014
WITH
CIVIL APPLICATION NO.1150 OF 2014

Eknath D. Tambe	...Appellant
V/s.	
Bhausahab A. Pakhade, since deceased through His L.Rs. - Suman B. Pakhare & Ors.	...Respondents

Mr.Rakesh P. Saroj for the Appellant.

Mr.Vaibhav P. Patankar for the Respondent Nos.1-A to 1-D.

CORAM : R.D. DHANUKA, J.
DATE : 26TH SEPTEMBER, 2016.

P.C. :-

1. By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original plaintiff) has impugned the judgment and decree dated 15th January, 2014 passed by the learned District Judge, - 13, Pune, allowing Exhibit – 5 filed by the original defendant partly and setting aside the decree passed by the learned trial Judge insofar as specific performance of the agreement is concerned. The parties in this order are described as per their status in the trial Court proceedings.

2. The plaintiff had entered into an agreement to sell on 5th

October, 1994 in respect of the suit property for a total consideration of Rs.17,000/-. The plaintiff has paid an amount of Rs.10,000/- as earnest money. It was the case of the plaintiff that the defendant executed the sale deed after obtaining due permission of the Collector. It was the case of the plaintiff that since the defendant did not execute the sale deed, the plaintiff filed a suit for specific performance of the agreement. The suit was resisted by the original defendant Bhausahab Arjun Pakhare. It was urged by the defendant that the suit was bad for non-joinder of necessary parties. The agreement was without consideration. It was also urged by the defendant that the portion admeasuring 4-H 9.5-R had been given by the deceased defendant Bhausahab Arjun Pakhare to defendant no.1-A in lieu of the compromise in H.M.P. No.4 of 2000 for her livelihood and she was cultivating the said land.

3. The learned trial Judge framed seven issues. The parties led oral as well as documentary evidence.

4. By a judgment and decree dated 31st March, 2006, the learned trial Judge decreed the said suit partly and directed the defendant no.1-A to 1-E to execute the sale deed of the share admeasuring 12-R within the boundaries mentioned out of gat no.239 in favour of the plaintiff by accepting the balance consideration of Rs.7000/-. The learned trial Judge however, answered the issue

whether the plaintiff was in possession of the suit land or not in the negative.

5. Being aggrieved by the judgment and decree passed by the learned trial Judge, the defendants filed an appeal (Regular Civil Appeal No.576 of 2006) before the learned District Judge,Pune. The learned District Judge, Pune by a judgment and decree dated 15th January, 2014, allowed the appeal filed by the defendant partly. The learned District Judge refused to grant relief of specific performance, however, directed the defendant to refund the earnest amount of Rs.10,000/- with interest at the rate of 6% p.a. from 5th October, 1994 till realization. The plaintiff has impugned the judgment and decree dated 15th January, 2014 passed by the learned District Judge, Pune insofar as refusal of the specific performance is concerned. The learned counsel for the plaintiff invited my attention to the sale deed forming part of the compilation filed along with the second appeal and would submit that under the said sale deed, the predecessor of the defendant had agreed to sell a specific portion coming to his share on the Southern side out of larger size of the Joint Hindu property forming part of of gat no.239.

6. It is submitted by the learned counsel that though specific location was referred in the agreement for sale, the first appellate Court has reversed the finding rendered by the learned trial Judge

without recording sufficient reasons and more particularly on the ground that the decree for specific performance of contract could not be granted without specification of boundaries. He submits that the findings recorded by the learned trial Judge could not have been set aside by the first appellate Court without recording independent findings.

7. Learned counsel for the defendant on the other hand placed reliance on the findings recorded by the first appellate Court and would submit that the judgment and decree passed by the first appellate Court is a reasoned decree. He submits that the learned first appellate Court has rightly exercised the discretion under section 20 of the Specific Relief Act by refusing to grant specific performance for the reasons recorded in the impugned judgment and decree.

8. A perusal of the sale deed, to which my attention has been invited by the learned counsel for the plaintiff indicates that the suit property is admittedly an undivided property belonging to the several co-parceners. The suit property was admittedly not partitioned. A perusal of the agreement for sale entered into between the plaintiff and the predecessor of the defendants indicates that the boundaries of the property agreed to be sold was not demarcated. The possession of the suit property was admittedly not given to the plaintiff. The learned trial Judge has recorded a finding insofar as the

possession of the suit property is concerned against the plaintiff.

9. A perusal of the impugned judgment and decree rendered by the first appellate Court indicates that several issues were raised by the defendant and considered by the learned District Judge. The learned District Judge has not only rejected the relief of specific performance on the ground that there was no specification of boundaries in the agreement for sale entered into between the plaintiff and the predecessor of the defendant but also on the ground of the suit property being fragment land and the sale thereof is prohibited by law, there was no partition of the suit property though there were several other co-parceners claiming undivided share in the suit property, the consent of other co-owners not having been obtained, the defendant being tribal and that the sale is hit by the provisions of sections 36 and 36-A of the Maharashtra Land Revenue Code.

10. In my view, the learned first appellate Court has rightly refused to exercise discretion under section 20 of the Specific Relief Act. Admittedly the demarcation and the boundaries of the property agreed to be sold in favour of the plaintiff by the predecessor of the defendant was not mentioned specifically in the agreement for sale. Consent of the other co-owners was not taken. There was no prayer for partition of the suit property. The sale of the fragment land was

also prohibited by law.

11. In my view, the learned first appellate Court has rightly considered various other issues and has appreciated the oral as well as documentary evidence in the right perspective which the learned trial Judge did not. I do not find any infirmity in the impugned judgment and decree passed by the first appellate Court. No substantial question of law has arisen in this second appeal. The appeal is devoid of merits and is accordingly dismissed. No order as to costs.

12. In view of dismissal of the second appeal, the civil application does not survive and is accordingly disposed of.

13. It is made clear that this Court has not set aside the impugned order passed by the first appellate Court insofar as the refund of the amount paid by the plaintiff with interest as awarded by the first appellate Court is concerned.

(R.D. DHANUKA, J.)