

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***SECOND APPEAL NO.599 OF 2016
ALONG WITH
CIVIL APPLICATION NO.1198 OF 2016
IN
SECOND APPEAL NO.599 OF 2016***

Duryodhan Sahdeo Shelke .. Appellant/Applicant

Vs.

Parshuram Krishna Kolekar & Ors. .. Respondents

Mr.Sarthak Diwan for Appellant/Applicant.

Mr.D.W. Bhosale i/by Ms.Snehal Kundalkar for Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 20th September 2016

P.C.

. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant no.2) has impugned the judgment and order dated 23rd February 2016 passed by the learned District Judge-6, Satara dismissing the Regular Civil Appeal No.435 of 2012 filed by the appellant. In the said appeal, the appellant had impugned the judgment and decree dated 21st August 2012 in favour of the plaintiff for specific performance of the contract entered into between the plaintiff and the defendant no.1. The appellant herein claims to be a purchaser of the suit property from the defendant no.1 under the Agreement dated 9th January 1996. It was the case of the plaintiff that the defendant no.1 had right, title and interest in the suit property and had agreed to sell the said property upon payment of consideration. The defendant no.1 also agreed to deliver possession of the suit land and execute agreement to sell. It was the case of the plaintiff that the plaintiff

accordingly claimed consideration amount from the defendant no.1 and executed a registered agreement of sale and delivered the suit land to the plaintiff. The appellant (original defendant no.2) is admittedly the Nephew of the defendant no.1. Since the defendant no.1 executed a registered sale deed in respect of the suit land in favour of the defendant no.2, the plaintiff filed a suit for specific performance and in the alternative claim for damages. The suit was resisted by both the defendants.

2. In so far as the appellant herein is concerned, it is the case of the appellant that he was a bonafide purchaser for value without notice. He also disputed the transaction between the plaintiff and the defendant no.1. It was the case of the plaintiff that the suit land was not partitioned and therefore, there was no question of delivery of possession of the suit land by the defendant no.1 to the plaintiff. The learned trial Judge framed six issues. The plaintiff as well as the defendant no.2 examined the witnesses. The learned trial Judge passed judgment and decree dated 21st August 2012 and granted relief for specific performance in favour of the plaintiff on payment of balance amount.

3. Being aggrieved by the judgment and order dated 21st August 2012, the defendant no.2 filed an appeal (Regular Civil Appeal No.435 of 2012) before the learned District Judge, Satara. The defendant no.1 did not file any appeal. The learned District Judge framed eight points for determination including the issue as to whether the plaintiff had proved that the defendant no.1 agreed to sell the suit land to him for valuable consideration of Rs.30,000/- and as to whether the defendant no.1 had proved that he was a bona fide purchaser for value without

notice. The first appellate Court has rendered a finding that the plaintiff had proved that the defendant no.1 agreed to sell the suit land to him for valuable consideration of Rs.30,000/-. It is also held that the defendant no.2 had failed to prove that he was a bona fide purchaser for value without notice.

4. By a judgment and order dated 23rd February 2016, the learned District Judge has dismissed the Regular Civil Appeal No.435 of 2012 filed by the defendant no.2. The defendant no.2 has impugned the said judgment and order dated 23rd February 2016 by filing this second appeal under Section 100 of the Code of Civil Procedure, 1908.

5. Learned counsel for the appellant placed reliance on Section 19 of the Specific Relief Act, 1963 and would submit that since the defendant no.2 was a bonafide purchaser without notice, the specific performance of the contract in favour of the plaintiff could not be enforced. The transaction between the defendant no.1 and the defendant no.2 could not be declared as illegal and no relief for specific performance could be granted in favour of the plaintiff. He submits that though the specific issue was raised by the defendant no.2 before the trial Court in the written statement, in this regard, the trial Court has not considered this issue. He makes a similar grievance in respect of the order passed by the first appellate Court on this issue.

6. The next submission of the learned counsel for the defendant no.2 is that though the suit property was a joint family property and was not partitioned, the question of delivery of possession of the suit property by the defendant no.1 to the plaintiff did not arise.

7. Learned counsel appearing for the original plaintiff placed reliance upon the findings of facts recorded by the learned trial Judge as well as the first appellate Court and would submit that these findings are not perverse and thus this Court cannot interfere with such findings of facts under Section 100 of the Code of Civil Procedure, 1908.

8. In so far as the first submission made by the learned counsel for the defendant no.2 is concerned, it is submitted by the learned counsel that admittedly the defendant no.2 is the Nephew of the defendant no.1 and was cultivating adjoining land and was thus fully aware of the transaction between the plaintiff and the defendant no.1. He submits that the trial Court as well as the first appellate Court have considered this issue in the impugned orders and judgments and rendered a finding of fact that the defendant no.2 was not a bonafide purchaser without notice.

9. In so far as the issue raised by the learned counsel for the defendant no.2 that though the suit property was a joint family property and was not partitioned, delivery could not be effected by the defendant no.1 in favour of the plaintiff is concerned, it is submitted that there is no dispute that even when the agreement to sell was entered into between the plaintiff and the defendant no.1, no partition had taken place.

10. In so far as the first submission of the learned counsel for the defendant no.2 is concerned, a perusal of the record passed by the learned trial Judge as well as the first appellate Court indicates that the specific finding of fact is rendered against the defendant no.2 after considering the oral and documentary evidence that he was not a bonafide

purchaser without notice. In my view, two Courts below have rightly granted specific performance in respect of the agreement entered into between the plaintiff and the defendant no.1. Since the plaintiff had proved the agreement and compliance of his part of the obligation under the agreement entered into between the plaintiff and the defendant no.1, the defendant no.1 could not have sold the property to the defendant no.2. In my view, there is no substance in the submission of the learned counsel for the defendant no.2.

11. In so far as the next submission of the learned counsel for the defendant no.2 that possession of the suit property could not have been delivered by the defendant no.1 to the plaintiff on the ground that the joint family property was not partitioned is concerned, it is not the case of the defendant no.2 that the suit property was partitioned before entering into the sale deed in favour of the defendant no.2 by the defendant no.1. There is no substance in the submission of the learned counsel for the defendant no.2.

12. A perusal of the orders passed by the two Courts below clearly indicates that the plaintiff had proved that the defendant no.1 had delivered the possession of the suit land to the plaintiff. In my view, the findings rendered by the two Courts below are rendered after considering the oral as well as documentary evidence led by both the parties and the said findings of facts being not perverse, cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908. Learned counsel for the defendant no.2 did not press any other issue before this Court. In my view, appeal is totally devoid of merit and is

accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.