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

***SECOND APPEAL NO.475 OF 2014
with
CIVIL APPLICATION NO. 1113 OF 2014***

Shivaji Maruti Mithe. ...Appellant/Applicant.

V/s.

Kashibai Maruti Honrao
Since deceased during pendency of the
Suit through her legal heirs Kailas Maruti
Honrao & Ors. ... Respondents.

Mr. V.S. Deokar for the Appellant/Applicant.
Mr. Sanjay Thokade for Respondents 1-A.
Mr. Rahul Shinde i/b. Vijay Garad for Respondents 2 and 3.

CORAM : N.M. Jamdar, J.

22 June, 2016.

Oral Order :-

The Appellant challenges the concurrent judgments and orders passed by the Civil Judge, Barshi dated 25 November 2008 and by the District Judge, Solapur dated 2 April 2014 dismissing the Suit and Appeal of the Appellant – Plaintiff. The Appellant – Plaintiff filed a Suit for specific performance of an agreement stated

to be executed by Defendant No.1 Kashibai on 18 February 2000. According to the Appellant, Defendant No.1 was unwell and she needed money for medical treatment and intended to sell the property. The Appellant accordingly entered into an agreement for sale and consideration of Rs.1,75,000/- was given. Since the Defendant No.1 did not execute the agreement, the Suit was filed. The property was sold by Defendant Nos. 2 and 3 who were joined as Defendants. Both the Courts concurrently held that the manner in which the agreement was executed, the considering the age and education of the parties, it was clear that the Defendant No.1 was not aware of the contents of the documents and that she was coerced into signing the deed by her son Kailash. Accordingly, the Suit and Appeal were dismissed.

2. The learned Counsel for the Appellant submitted the Defendant No.1 has not denied her signature on the agreement and also that on the same day the another sale deed was executed between the parties, which is not challenged.

3. Both the Courts have considered the evidence of the parties in detail. The learned Civil Judge has emphasized the role of the son of Defendant No.1 who was addicted to vices. The learned Judge rendered a finding of fact that son of Defendant No.1 ill-treated her and forced her to sign the agreement. As regard the other sale deed at Exhibit 45, the learned Civil Judge, after considering the

evidence, held that no suggestion was put by the Appellant in respect of the other sale deed. Even otherwise merely because one transaction is accepted does not mean the other automatically proved.

4. The learned District Judge considered the evidence on record again and found that Defendant No.1 was of advanced age and nothing was placed on record that Defendant No.1 knew the contents of the deed. The learned District Judge also found that the agreement to sell had certain erasures and was not trust-worthy. The agreement is dated 18 February 2000. The property is already in favour of Defendant Nos. 2 and 3. The Appellant is not in possession.

5. Considering the facts and circumstances, both the Courts were right in not granting the discretionary relief of specific performance in favour of the Appellant. No question of law arises. The Appeal is dismissed. Civil Application is disposed of accordingly.

(N.M. Jamdar, J.)