

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.123 OF 2013
WITH
CIVIL APPLICATION NO.1463 OF 2012

Dashrath K. Shinde	...Appellant
V/s.	
Baban B. Dude, since deceased through His L.Rs.	...Respondents

Mr.Milind Deshmukh for the Appellant.

Mr.S.C. Mangale with Mr.Harshad Sathe and Mr.Saurabh Butala for
the Respondent Nos.10 and 11.

CORAM : R.D. DHANUKA, J.
DATE : 31ST AUGUST, 2016.

P.C. :-

1. By this appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original plaintiff) has impugned the order and judgment dated 20th August, 2010 passed by the learned District Judge – 16, Pune, filed by the appellant. In the said appeal, the appellant has impugned the judgment and decree dated 8th March, 2007, rejecting the prayer for specific performance of the contract dated 3rd May, 1993. Some of the relevant facts for the purpose of deciding this second appeal are as under :

2. The original defendant had admittedly entered into an

agreement to sale on 3rd May, 1993 with the original plaintiff. It was the case of the original defendant that the suit property was joint family property and the plaintiff was not the owner of the property.

3. Since the defendant executed the sale deed in favour of the plaintiff, the plaintiff filed a suit for specific performance of the said agreement to sale dated 3rd May, 1993. The suit was resisted by the defendant on various grounds, including on the ground that the suit for specific performance was not maintainable in view of the fact that the suit property was a joint family property and the consent of other co-owners was necessary.

4. The learned trial Judge framed nine issues. The plaintiff examined himself and two more witnesses. The defendants also examined some of the witnesses.

5. The learned trial Judge after considering the oral and documentary evidence has rendered a finding that the plaintiff had failed to prove that the original defendant was exclusive owner and possessor of the suit land since 1952. The learned trial Judge also held that the defendant has proved that the consent of other co-owners was necessary. Both the Courts below rendered a finding that the plaintiff had proved that the defendant failed to execute the sale deed despite repeated demands and though the plaintiff was ready and willing to perform his part of contract, the learned trial Judge

refused to exercise the discretion under section 20 of the Specific Relief Act, 1963 and refused to grant reliefs for specific performance however, directing the defendants jointly or severally to pay an amount of Rs.5,000/- with interest at the rate of 10% p.a. from the date of suit till realization of the decretal amount.

6. The plaintiff being aggrieved by the rejection of the prayer for specific performance by the learned trial Judge, judgment and decree dated 8th March, 2007, filed an appeal (348 of 2007) before the learned District Judge, Pune.

7. Learned District Judge – 16, Pune by an order dated 20th August, 2010, dismissed the said appeal on various grounds. The appellate Court framed 10 points for consideration and after considering the oral and documentary evidence rendered a finding of fact that the plaintiff had failed to prove that the original defendant was the exclusive owner and possessor of the suit land on the date of the agreement dated 3rd May, 1993. The appellate Court rendered similar findings independently after considering the documentary and oral evidence.

8. Learned counsel appearing for th appellant submits that since the original defendant had admitted that he had executed an agreement to sell in favour of the appellant, the learned trial Judge ought to have passed a decree to the extent that the original

defendant had a share in the suit property. Upon raising a query by this Court, the learned counsel for the appellant fairly conceded that his client had not prayed for a decree in respect of part of the property under section 12 of the Specific Relief Act, 1963.

9. A perusal of the record indicates that the learned trial Judge has after considering oral as well as documentary evidence rightly exercised the discretion under section 20 of the Specific Relief Act, 1963 and refused to grant specific performance of the agreement to sell in view of the consent of the other co-owners not having been obtained for transfer of the suit property or on the ground that they being not parties to the agreement for sale. The learned trial Judge in my view, has rightly granted a relief only for refund of the amount paid by the plaintiff to the defendant with interest.

10. The findings rendered by Courts below are concurrent findings of fact which are not perverse and thus cannot be interfered with by this Court under section 100 of the Code of Civil Procedure, 1908. The appeal is devoid of merits and is accordingly dismissed.

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

(R.D. DHANUKA, J.)