

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

FIRST APPEAL NO.358 OF 2013

Nareshkumar Govindram Khatter Appellant
Vs.
Yogeshkumar Nathalal Shah & Ors. Respondents

Mr. Amit Sale, Advocate for the appellant.
Mr. S.R. Nargolkar, Advocate for respondents 1 to 3.

Coram : **Smt. R.P. SondurBaldota, J.**
Date : 5th April, 2016

P.C.

1 This appeal is directed against the decree dtd. 13th July, 2012, by which the trial court dismissed the appellant's suit for specific performance of the agreement of sale of a flat by respondent no.1 to the plaintiff. Admittedly, respondent no.1 is not the owner of the property, on which construction of the building was to be carried out. Respondents no. 2 and 3, who are original defendants no.2 and 3 have nothing to do with the suit property. The trial court has on appreciation of the pleadings and evidence held that the appellant has failed to prove that the respondents had agreed to sell him flat no.101 on the first floor of the proposed Gangeshwar complex or that any agreement of sale executed as claimed by the appellant. It further held that the appellant has failed to establish that he had made advance payment of Rs.6,00,000/- to the respondents for purchase of flat no.101.

2 The appellant had examined four witnesses in support of his case i.e. himself, his brother, one Harpalsinh Sursinh Zala, a witness to the agreement for sale and Mr. Amarkumar Navinrai Desaval, Advocate. The evidence of these witnesses is found to be inconsistent and contradictory to each other on every aspect of the claim of the appellant. The appellant claims to have paid a sum of Rs.6,00,000/- to the respondents towards part consideration of the transaction of sale, whereas his brother has deposed that the amount was a loan by him to the respondents. Witness, Zala also refers to the payment. But the trial court notes that it was not even the pleading of the appellant that the payment was made in the presence of the witness. These findings of the trial court are supported by the record. Thus, the appellant's own evidence does not support his claim. The trial court has therefore rightly dismissed the suit. Hence, the appeal is dismissed.

(Smt. R.P. SondurBaldota, J)