

JPP

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

***SECOND APPEAL NO. 710 OF 2014
with
CIVIL APPLICATION NO. 1656 OF 2014***

Mr. Narayan Rajaram Dhanave & Ors. ... Appellants/Applicants.

V/s.

Malatibai Bhagwant Kulkarni
Since deceased through her heirs & legal
representatives
Smt. Shashikala Arvind Kulkarni & Ors. ... Respondents.

Mr. Dilip Bodake for the Appellants in SA 710/14 & Applicant in
CA 1656/14.

Mr. V.S. Talkute for Respondents in SA 710/14.

CORAM : N.M. Jamdar, J.

05 July, 2016.

Oral Order :-

The Respondents – Plaintiffs filed a Special Civil Suit No. 75 of 1988 in the Court of Civil Judge, Senior Division, Satara seeking specific performance of agreement of sale dated 17 January 1983. According to the Respondents – Plaintiffs, the land admeasuring 1 Hectar and 58 R situated at Village Saidapur, Taluka

& District - Satara, which belonged to Defendant Nos.1 to 3. It was agreed to be sold by them for the price of Rs.1,24,000/-. On the same date the agreement was executed by accepting earnest amount of Rs.15,000/-. According to the Respondents – Plaintiffs the Appellants – Defendants had to obtain permission for non-agricultural use from the Revenue Authority and after balance consideration was paid, the sale deed was to be executed. According to the Respondents – Plaintiffs, inspite of notice dated 6 April 1986, the Appellants – Original Defendants did not execute the sale deed. Therefore, the Suit had to be filed.

2. It was also the contention of the Respondents – Plaintiffs that the last amount was received on 22 June 1986 and in total the amount of Rs.86,397/- out of consideration of Rs.1,24,000/- was paid. The Appellants - Defendants took a stand that they did not receive any amount from the Respondents – Plaintiffs and in view of the provisions of the Bombay Tenancy and Agricultural Lands Act 1948, the agreement could not be executed and the agreement was only on the loan transaction. The learned Civil Judge framed issues as to the agreement, proof of payment, bar of limitation and whether the agreement was executed by way of security. The learned Civil Judge answered the issues in favour of the Respondents – Plaintiffs and against the Appellants. However, the learned Civil Judge exercising power under Section 20 of the Specific Relief Act, 1963 held that directing specific performance of the agreement was not

equitable since the Respondents – Plaintiffs did not approach the Court with clean hands as the property was to be purchased for establishing a co-operative society which did not take place and that the sale was by an agriculturalist to non-agriculturist which was against public policy. Accordingly, the learned Civil Judge dismissed the Suit by judgment and order dated 30 September 1995. Appeal bearing No. 96 of 2001 was filed by the Respondents – Plaintiffs in the District Court. It was first filed in this Court and thereafter, transferred to the District Court. The learned District Judge confirmed the finding of the learned Civil Judge on the other issues and reversed the finding based on Section 20 of the Specific Relief Act. Accordingly, by the judgment and order dated 26 September 2014, the learned District Judge allowed the Appeal. The Appellants had filed cross-objections challenging the findings of the learned Civil Judge which were also dismissed.

4. The learned Counsel for the Appellants – Original Defendants in Second Appeal No. 710 of 2014 submitted that the exercise of discretion by the learned Civil Judge is proper and is exercised as per the decision of the Apex Court in the case of *Parakunnan Veetill Joseph's Son Mathew v/s. Nedumbara Kuruvila's Son and Ors.* reported in 1987 (Supp) SCC 340. He submitted that the conduct of the Respondents – Plaintiffs dis-entitled the Plaintiffs from seeking a decree for specific performance. It was also submitted

that the land was purchased for setting up a co-operative society which was not factually correct and the land could not have been sold to non-agriculturist.

5. As far as contention based on Section 20 of the Act is concerned, it is no doubt true that merely because specific performance can be granted is not that it must be granted and the Court is not divested of discretion to refuse specific performance in a given case. However, this discretion, as Section 20 itself states, must be judicial discretion, capable of being corrected in Appeal. The discretion cannot be used on mere perception on what is equitable and what is not equitable. It must be clearly established that even though the Plaintiffs are entitled for specific performance, granting of specific performance would lead to a highly equitable results. In the present case all the three factors taken into consideration by the learned Civil Judge to exercise discretion under Section 20 are not germane. For what purpose the Respondents – Plaintiffs wanted to purchase the property is no concern of the Appellant. The Appellants were selling the property for monetary gains. In fact the contradictory theories are sought to be put up by the Defendants in their written statement regarding the manner of purchase. Therefore, the learned Appellate Court has rightly observed that the learned Civil Judge has himself confused the issue of forming co-operative in the context of Section 20 of the Act.

5. As regard approaching the Court with clean hands , it is the contention of the learned Counsel for the Appellants that the Respondents – Plaintiffs stated that they were in possession however this is found to be falsified in evidence. This will not take the case any further as the Respondents – Plaintiffs had sought an alternate prayer that in case they are not found in possession, the possession be delivered to them. On this sole ground the Respondent – Plaintiffs cannot be non-suited. As regard grant of permission is concerned, the order can always be passed subject to grant of permission. Therefore, even though the Appellate Court may not have adverted to the issue of possession, the Appellate Court was right in coming to the conclusion that discretion under Section 20 by the learned Civil Judge was incorrectly exercised.

6. The learned Counsel for the Appellants submitted that the Appellants had filed cross-objections and had challenged the findings of the Trial Court however there is no satisfactory discussion in the decision of the Appellate Court. I have gone through the decision of the Appellate Court. As rightly pointed out by the learned Counsel for the Respondents – Plaintiffs that the elaborate reasons are not necessary as the learned District Judge has confirmed the findings of the Trial Court. It was contended by the learned Counsel for the Appellants that the Suit was filed beyond period of limitation. The Suit was filed in the year 1988 when the agreement was of the year 1983. However, both the Courts have

rendered a finding of fact that last payment was made by the Respondents – Plaintiffs in June 1986. Therefore, the issue of limitation has rightly been answered in favour of the Respondents – Plaintiffs.

7. As regard the readiness and willingness is concerned, the learned Civil Judge has dealt with that issue in detail. The learned Civil Judge found that substantial amount was paid by the Respondents – Plaintiffs. The Appellants failed to obtain necessary permission. Notice was issued by the Respondents – Plaintiffs and periodical payments were made by the Respondents – Plaintiffs. On the other hand, the Appellants took various contentions to somehow stall execution of the agreement and none of these contentions have been found to be factually correct by both the Courts. In the circumstances, the contention that the Respondents – Plaintiffs have not proved readiness and willingness has been rightly negated by both the Courts.

8. As regard the contention of the learned Counsel for the Appellants that the land could not be sold as it was non-agricultural land and thereafter, in the green zone and also that it was reserved for oxidation plant, evidence has been assessed by the Courts below. An officer from the concerned planning authority was examined. It has come on record that though there was a proposal for oxidation plant, it has not been taken forward. The Suit is of the year 1988.

Nothing is placed on record that the said plan has come up or it has been sanctioned. In the circumstances, the conclusion reached by both the Courts that the Respondents – Plaintiffs are ready and willing that the agreement was the genuine agreement for sale and the suit was within period of limitation cannot be disturbed. As regard use of discretion under Section 20 is concerned, I am of the opinion that the learned District Judge has rightly corrected the use of its discretion by the learned Civil Judge in the appellate powers.

9. In the circumstances, no substantial question of law arises in this Appeal. The Appeal is dismissed. The Civil Application disposed of accordingly.

10. The learned Counsel for the Appellants seeks continuation of the statement made by the learned Counsel for the Respondents. The learned Counsel for the Respondent – Plaintiffs opposes. He submits that even though execution proceedings are listed on 7 July 2015, it will take at least 2 -3 months to complete those proceedings to reach the stage of handing over the possession. In view of this statement made, which is accepted, there is no need to grant any protective order because as per the statement made by the learned Counsel for the Respondents – Plaintiffs, the process of handing over possession will take three months at least.

(N.M. Jamdar, J.)