

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

SECOND APPEAL NO.93 OF 2016

MADHORA S/O GOVINDRAO NIMBALKAR  
VS  
RAJKUMAR S/O SUKHDEORAO BHAGAT

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri A.A. Bhide, Advocate for the appellant.  
Shri A. M. Gedam, Advocate for the respondent.  
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**CORAM : A.S. CHANDURKAR, J.**  
**DATED : APRIL 11, 2016.**

1. The appellant is the original defendant who has challenged the judgment of the Appellate Court passed in Regular Civil Appeal No.105/2011 dismissing the said appeal and upholding the decree for specific performance passed by the trial Court.

2. Land admeasuring 2 Hectares 2 R was the subject matter of registered agreement dated 29-4-2005 entered into by the appellant. The sale consideration was fixed at Rs.1,70,000/- out of which an amount of Rs.1,50,000/- was received by the appellant. The sale deed was to be executed by 30-4-2006. On the sale deed not being executed, the plaintiff issued notice to the defendant and thereafter filed suit for specific performance on 24-1-2007.

3. The trial Court recorded a finding that the

agreement dated 29-4-2005 was duly proved and that the plaintiff was ready and willing to perform his part of the agreement. It did not accept the defence raised by the defendant that the transaction was a money lending transaction. It considered the evidence of the attesting witness and thereafter decreed the suit.

The appellate Court after re-appreciating the evidence noted the conduct of the defendant that there was no reply to the notices issued by the plaintiff. It also found that only an amount of Rs.20,000/- was to be paid by the plaintiff. It also did not accept the stand of the defendant that the transaction was a loan transaction.

4. Shri A. A. Bhide, learned Counsel for the appellant submitted that while executing affidavit at Exhibit-16, the defendant had stated that the suit property was mortgaged. He submitted that it was never the intention of the appellant to sell the suit property. According to him, both the Courts failed to exercise discretion by considering the provisions of Section 20(2)(c) of the Specific Relief Act. He placed reliance upon the judgment of the Hon'ble Supreme Court in *Ramesh Chand vs. Asruddin* 2015(6) Bom. C. R. 243.

5. Shri A. M. Gedam, learned Counsel for the respondent supported the impugned judgment. He submitted that both the Courts have concurrently held that the appellant

had executed the agreement in question and that the plaintiff was ready and willing to perform his part of the agreement. He further submitted that the defence as raised was not proved by the defendant.

6. Having heard the respective Counsel, I do not find that the second appeal gives rise to any substantial question of law. The agreement at Exhibit-36 is a registered document and the plaintiff had examined an attesting witness at Exhibit-17. The records further indicate that in response to the notices issued by the plaintiff seeking execution of the sale deed, there was no reply given by the appellant. The defence as sought to be raised has not been duly proved.

7. The affidavit at Exhibit-16 has been executed by the appellant himself. Merely on that basis, it cannot be held that the property in question had been mortgaged and that the defendant had no intention to sell the same. The mortgage of the property could have been proved by the appellant by leading evidence in that regard. As regards the discretion that has been exercised by both the Courts in granting specific performance, I do not find that the same is in any manner contrary to the provisions of Section 20(2)(c) of the said Act. In the case of *Ramesh Chand (supra)*, the aspect of mortgage and its redemption had not been specifically pleaded or proved by the plaintiff therein. In the

present case, there is no evidence with regard to any mortgage by the defendant. Hence, aforesaid judgment cannot assist the case of the appellant.

8. In view of aforesaid, the second appeal does not give rise to any substantial question of law. The same is dismissed. No costs.

JUDGE

/MULEY/