

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.358 of 2016
(Bandu s/o Shankar Wele v. Champat s/o Narayan Bawane)

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

Smt. R.D. Raskar, Advocate for Appellant.

Coram : R.K. Deshpande, J.
Date : 9th August, 2016

The Trial Court dismissed the suit for specific performance of contract dated 26-4-2005 and the lower Appellate Court has confirmed such a decree. Hence, the plaintiff is before this Court against the concurrent findings of fact.

The only ground on which the plaintiff is non-suited is that the plaintiff has failed to establish readiness and willingness to perform his part of contract. It is not disputed that there was a condition incorporated in the agreement that the defendant shall co-operate with the plaintiff for obtaining permission from the Competent Authority for sale of Class-II land or for grant of permission to convert Class-II land into Class-I land. The Courts below have held that the plaintiff has not placed on record anything to show that he had called upon the defendant to co-operate for obtaining such permission from the Collector. It is not disputed that without obtaining permission, the sale of the

suit property was not permissible in law.

At this stage, the learned counsel for the appellant has invited my attention to Civil Application (Stamp) No.13945 of 2016 for grant of permission to adduce additional evidence under Order XLI, Rule 27 of the Code of Civil Procedure with a plea that the notice was issued to the defendant calling upon him to co-operate for obtaining permission and to execute the sale-deed by accepting the balance amount of consideration. The notice was handed over to the counsel, but he did not file it on record. However, the learned counsel could not point out any pleading in the plaint to the effect that the plaintiff had issued such a notice to the defendant and that the defendant had refused to co-operate with the plaintiff. This was a material defect, which cannot be permitted to be cured by allowing the application under Order XLI, Rule 27 of the Code of Civil Procedure. The findings of fact recorded by the Courts below do not give rise to any substantial question of law.

The second appeal is dismissed.

Judge.

CERTIFICATE

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