

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

Second Appeal No.62 of 2015
(Dr. Arun Gopalrao Deshpande (Dead), through LRs. Smt. Nalanda wd/o
Arun Deshpande, and others v. Rajaram s/o Pusaji Bansod)

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

Shri Y.R. Sonkusare, Advocate for Appellant.
Shri N.R. Bhisikar, Advocate for Respondent.

Coram : R.K. Deshpande, J.
Date : 8th June, 2016

In Special Civil Suit No.37 of 2008 for specific performance of contract, the Trial Court by its judgment and order dated 25-2-2010 passed a decree for refund of an amount of Rs.3,20,000/p received by the defendants along with interest at the rate of 6% per annum. Regular Civil Suit No.45 of 2012, the lower Appellate Court has set aside the decree passed by the Trial Court on 26-9-2014 and the suit has been decreed by granting specific performance of contract to the plaintiff. The plaintiff is directed to deposit the balance amount of consideration of Rs.1,35,000/- and thereupon the defendants are directed to execute the sale-deed. Hence, the original defendants are before this Court in this second appeal.

The Trial Court recorded all the findings in favour of the

plaintiff in a suit for specific performance of contract, but denied the relief of execution of sale-deed by exercising discretion under Section 20 of the Specific Relief Act, 1963. The lower Appellate Court has concurred with all the findings recorded by the Trial Court, but reversed the finding recorded in respect of the discretion exercised by the Trial Court. In para 21 of the judgment of the lower Appellate Court, the finding of the Trial Court is reversed as under :

“21] In the light of above argument, it needs to be considered that, in the present case, the defendants could not substantiate their defence that the suit property is reserved. Moreover, even if it is reserved for the public purpose, till then there is no prohibition in executing registered sale deed in favour of the plaintiff. The Nagar Parishad has not applied any provision of the Maharashtra Regional and Town Planning Act. Therefore, the plaintiff cannot be prohibited to get the registered sale deed in his favour. Learned trial Court was impressed on the letter of Nagar Parishad vide Exh.55 and denied to grant relief of specific performance in favour of the plaintiff. Learned trial Court has not assessed the fact and circumstances properly. The judgment is based on the surmises and conjecture. There is absolutely no footing of thinking process. Even if relief of specific performance is granted in

favour of plaintiff and in a situation the suit property is kept reserved for the Post Office, then and then also the plaintiff may be in a position to get compensation from the Nagar Parishad itself. But purely on that basis, one cannot reject or deny the relief for specific performance in favour of the plaintiff.”

The learned counsel for the appellants/defendants has urged that the suit property is of 400 sq.ft. open land in front of the house of the defendants, and it is necessary for personal use of all the defendants. The lower Appellate Court ought not to have, therefore, disturbed the finding of the Trial Court exercising discretion to refuse the specific performance of contract.

Sub-section (2) of Section 20 of the Specific Relief Act deals with the cases in which the Court may properly exercise the discretion not to decree the specific performance. In view of this, it was for the defendants to have come forward with the case before the Trial Court for refusal to exercise the discretion in granting specific performance of contract. Except the discretion by the Trial Court, which has been reversed by the lower Appellate Court, no other evidence is brought on record to hold that the Trial Court was justified in refusing to grant specific performance of contract.

No substantial question of law arises for consideration.
The second appeal is dismissed.

Judge.

Lanjewar