

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

SECOND APPEAL NO.21/2016

(Sou. Laxmi w/o Krishnarao Gajbhiye ..vs.. Anil Narhari Patil)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Ms. Monika Sharma Advocate h/f Mr. S. V. Purohit,
Advocate for appellant.

Mr. S. S. Murthy, Advocate for respondent.

CORAM : A. B. CHAUDHARI, J.

DATE : APRIL 6, 2016

Heard learned counsel for the rival parties.
Learned counsel for the appellant submitted that the agreement for sale Exh.-19 was required to be rejected since the same was not stamped and, therefore, the suit ought to have been dismissed. She then submitted that the plaintiff was not ready and willing to perform her part of contract as against defendant who was ready to perform her part of contract. He then submitted that both the courts below committed an error in making a decree for specific performance of contract. She then submitted that the plea of hardship has not been properly dealt with by the courts below.

Per contra, Mr. Murthy, learned counsel for the respondent, submitted that out of Rs.4,15,000/-, an amount of Rs.3,15,000/- was paid

even according to the appellant and, therefore, the major payment having been made, the courts found that the plaintiff was ready and willing to perform their part of contract. He then invited my attention to the evidence of the plaintiff in which Exh.19 was given exhibit number and submitted that the document was exhibited without any objection raised by the appellant and, therefore, it is not open now to raise any objection to it. He submitted that the objection about stamp duty was never taken in the courts below and is being raised for the first time in this Court. This cannot be allowed. The courts below have recorded a finding of fact and as such no substantial question of law arises in the present appeal.

Heard learned counsel for the parties. Perused the record and judgment and decree passed by the trial Court as well as the appellate Court.

On perusal of Exh.19, I do not find any recital about handing over of possession or agreement of handing over the possession. That apart, the defendant ought to have raised the objection to the admissibility of document but then the objection was not taken either in the written statement or during the course of evidence of the plaintiff when the document was exhibited. The document thus went without any objection. It is well

settled law that in the absence of any objection, at later stage, it is not permissible to raise any objection. That part, the document was not required to be registered because there is no recital of handing over the possession.

The courts below then recorded finding of fact that the plaintiff was ready and willing to perform his part of contract on the premise that the major amount was paid by the respondent-plaintiff to the appellant--defendant and the respondent was always ready and willing to perform his part of contract. The finding of fact is legal, correct and proper. Insofar as the plea; the time is the essence of contract is concerned, the trial Court as well as the lower appellate Court recorded a finding that in the purchase of immovable property, time is not essence of contract and in fact that is the trite legal position. Thus the concurrent finding of fact recorded by both the courts below are correct and proper. No substantial question of law arises in the present appeal. Hence, I make the following order.

ORDER

- (i) Second Appeal No. 21/2016 is rejected.
No order as to costs.

JUDGE