

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL (STAMP) NO. 8467 OF 2015

Murar S/o Raman Patil,
age 42 years occupation agriculture
R/o Parivardha Taluka Shahada District Nandurbar
...APPELLANT
(Original plaintiff)

VERSUS

1. The State of Maharashtra.
2. The District Collector,
Nandurbar District Nandurbar
3. The Assistant Collector,
Sardar Sarovar Project,
Nandurbar District Nandurbar

...RESPONDENTS
(Original defendants)

Shri V.S. Bedre, Advocate for appellant
Mrs. V.N. Patil, Asstt. Govt. Pleader for respondents No.1 to 3.

CORAM : N.W. SAMBRE, J.

DATE : 28th July, 2017

ORAL ORDER

Appellant/plaintiff filed Special Civil Suit No. 43/2011 in the Court of Civil Judge (Senior Division), Shahada, for declaration that sale deed dated February 21, 2008, is illegal and void, and as

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such, it be set aside, for perpetual injunction restraining defendants from causing obstruction to his possession over the suit property and restraining the respondents from allotting the land to third person. Suit property is an agricultural land, which was purchased by the respondents/State Government, vide sale deed dated February 21, 2008, for the public purpose i.e. resettlement of project affected persons.

2. The learned Trial Court after considering the claim, partly decreed the suit of the plaintiff/appellant, thereby passing a money decree for Rs. 25050/- (Rs. Twenty five thousand fifty only). In appeal preferred by the present appellant being Regular Civil Appeal No. 3 of 2013, learned Ad-hoc District Judge-1, Shahada, confirmed the findings of the Trial Court. As such, this Second Appeal.

3. Shri Bedre, learned Counsel for the appellant/plaintiff would urge that the appellant, an illiterate person, transferred his land by sale deed dated 21st February 2008, on certain conditions amongst others, payment of 5% balance consideration and 20% extra payment to the preset appellant by the State Government, in future. According to him, in view of the provisions of section 54 of the Transfer of Property Act, the title would not vest in the State

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Government unless the entire sale consideration is received by the land owner/appellant. According to him, the appellant never sought money decree, and what was sought was setting aside the sale deed, which issue is ignored by the Courts below.

4. Per contra, Mrs. Patil, learned Assistant Government Pleader would urge that the appellant has received 95% of the total consideration and has voluntarily executed sale deed in favour of the State Government and also parted with possession. According to her, balance consideration of 5% of total consideration was towards security as the property stood vested in the State Government by virtue of sale deed alongwith all fixtures viz. motor pump, irrigation equipments, etc. She would then urge that the amount as ordered by the learned Trial Court is not questioned by the State Government and the judgment and decree of the Trial Court will be taken to its logical end. In the background, according to her, title vests in the State Government alongwith possession of the suit property and there is no case, which prompts for setting aside sale deed when appellant has failed to demonstrate any fraud or coercion. An additional statement is made that there is no provision of 20% extra payment to the appellant in the sale deed or through any policy of the Government. As such, according to her, the appeal is liable to be

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dismissed.

5. Perused the impugned sale deed. The appellant has executed the sale deed in favour of respondents upon receipt of consideration to the extent of 95% i.e. Rs. 4,75,950/-. The Trial Court decreed the suit of the appellant considering the fact that balance 5% amount was not paid to him. The recitals in the said sale deed speak of vesting of absolute title in respondents/State Government alongwith possession of the property. The appellant has also undertaken that he shall not initiate any proceeding questioning the sale deed.

6. In aforesaid backdrop, if the claim of the appellant is appreciated, it is required to be noted that the appellant having received 95% of the total consideration and the Trial Court having ordered payment of balance consideration of 5% to the extent of Rs. 25050/-, in my opinion, it has to be held that there was valid sale in favour of respondents.

7. Learned Assistant Government Pleader has rightly pointed out that the appellant has not come out with the case that the State Government has practised fraud in getting land transferred in its favour.

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8. So far as next submission of the appellant about entitlement of 20% extra consideration towards valid consideration in the sale deed, there is no policy of the State Government to that effect or no recitals to cited effect demonstrated by the appellant before the Court below or before this Court. Both the courts below or this Court will not pass a money decree merely for asking unless the appellant demonstrates that in law he was entitled for such dues from the State Government towards transfer of his agricultural land for public purpose.

9. Having considered the definition of 'sale' as provided in the Transfer of Property Act in the backdrop of provision of section 54 of the said Act, this Court has already held that respondents/State Government becomes absolute owner of the property as the title and possession of the suit property vests in respondents/State Government.

10. In the aforesaid backdrop, in my opinion, no case for interference against concurrent findings is made out. Appeal fails. Hence the appeal stands dismissed.

(N.W. SAMBRE, J.)

pjm