

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.380 OF 2012

(Rukminbai Ganesh Bharati and another Vs. Nirmala Madhav
Parwat)

Mr. Sunil M. Vibhute, Advocate for the Appellants
Mr. G.P. Shinde, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 11th JULY, 2017

ORAL ORDER :

Heard the learned counsel for the parties.

2. The learned counsel for the appellants submits that the Agreement of Sale (Exh-46) has been wrongly admitted in evidence despite the objection being raised that it was not sufficiently stamped. He submits that the Agreement of Sale, coupled with delivery of possession of the immovable property, itself amounts to a conveyance and therefore, it requires the stamp duty as is required for the deed of transfer of the property.

3. As seen from paragraph No. 22 of the judgment of the Trial Court, the Agreement of Sale was exhibited tentatively keeping open the objection raised by the appellants on its admissibility for want of requisite stamping. However, the said objection has not at all

been considered and the learned Trial Judge extended liberty to the respondent to prove the Agreement of Sale by oral evidence. It is well settled that when any contract is reduced into writing, the very writing should be produced before the Court to prove the contents thereof and oral evidence to prove the contents is not admissible. The Appellate Court has not considered this valid and legal point, which touches the very admissibility of the Agreement of Sale. Had the Agreement of Sale itself been held as not admissible in evidence, the question of acting upon that Agreement of Sale for passing of the decree for specific performance would not have arisen. In the circumstances, I find that there are substantial questions of law involved in this appeal. Therefore, though there is concurrent finding of facts recorded by the Trial Court and the Appellate Court, the Second Appeal will have to be admitted. Besides the above mentioned points, the appellants have raised certain other points about limitation and use of discretion by the Court in granting the relief of specific performance. In the circumstances, I formulate the following substantial questions of law:-

- (i) Whether the Agreement of Sale (Exh-46), was sufficiently stamped and was admissible in evidence ?
- (ii) Whether oral evidence was admissible to prove the contents of the agreement of sale ?
- (iii) Whether the suit for specific performance was within limitation ?
- (iv) Whether the Trial Court and the First Appellate Court judiciously exercised the discretion in passing the decree for specific performance ?

4. **Admit** the appeal.

5. The learned counsel for the respondent waives service of notice on admission of the appeal.

6. Call record and proceedings.

7. Considering the above referred legal and valid substantial questions of law, the appeal has been admitted. Therefore, Civil Application No. 6662 of 2012, seeking stay to the execution of the impugned decree is allowed, otherwise very purpose of filing the appeal would be frustrated. There shall be stay to the

execution of the impugned decree until final decision of the Second Appeal.

8. Inform the Trial Court accordingly.

9. The Civil Application stands accordingly disposed of.

[SANGITRAO S. PATIL]
JUDGE

npj/sa380-2012