

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 65 OF 2017

SHRI. GOPAL KESHAV GAONKAR (DEC)
THR. LRS. AND ANR.,

... Appellants

Versus

SHRI. VINAYAK GOPAL KAWTHANKAR
(DEC) THR. ITS LEGAL
REPRESENTATIVES AND 12 ORS.,

... Respondents

Mr. Ashwin D. Bhobe, and Ms. Shradha S. Bhobe, Advocates for
the appellants.

Coram:- F. M. REIS, J.

Date:- 29th June, 2017

P.C.:

Heard Mr. A. D. Bhobe, learned Counsel appearing for
the appellants.

2. The challenge in the above appeal is to the Judgments
passed by the Courts below, whereby the appellants' suit for
specific performance came to be dismissed.

3. Mr. Bhobe, learned Counsel appearing for the appellants
has pointed out that based on a Hundi, executed way back in the
year 1967, Gopal Kawthankar, father of the deceased respondent
No.1 had obtained a loan of Rs.300/-, whereby it was agreed that
in case the amount was not repaid, the appellants would be
entitled to purchase the property, wherein, according to the

appellants a house was constructed by the appellants. The learned Counsel further points out that the Courts below have misconstrued the pleadings of the appellants, as well as the documentary evidence adduced by the appellants to erroneously come to the conclusion that the appellants have failed to establish the agreement, as well as their possession over the suit property. The learned Counsel further submits that the Courts below have failed to note that in fact, there was an injunction operating against the appellants from carrying out any construction in the suit property which, according to him, would itself suggest that the findings of possession are perverse. The learned Counsel further points out that as such, the findings of the learned Judges are contrary to the material on record and/or by misreading the evidence adduced by the appellants. The learned Counsel submits that in any event, considering that, it is an admitted position that the father of the deceased respondent No.1 had, in fact, received the sum of Rs.300/-, the appellants are entitled for recovery of the said amount in terms of Section 22 of the Specific Relief Act. The learned Counsel, as such, submits that there are substantial questions of law which arise in the present appeal for consideration.

4. I have considered the submissions of the learned Counsel and, with his assistance, I have also gone through the records. The claim of the appellants for specific performance is based on

an oral agreement, claimed to have been entered with in view of a Hundi, which was executed by Gopal Kawthankar, father of the deceased respondent No.1 on 5th August, 1967. On a perusal of the said Hundi, it is seen that there is nothing to suggest that such amount was received on a condition that in case of default, the property would be sold to the appellants.

5. Apart from that, Mr. Bhobe, learned Counsel appearing for the appellants has also brought to my notice a letter addressed to one of the co-owners by the father of the deceased respondent No.1 wherein there is a mention that the property has been finally given to the appellants herein. But, however, I find that the question of reappreciating the evidence in a second appeal under Section 100 of the Code of Civil Procedure to examine the existence or otherwise of an oral agreement, would not at all be justified. The Courts below upon appreciating the evidence on record and examining the evidence of the son of the said Gopal Kawthankar, have concurrently come to the conclusion that the alleged agreement has not been established. The Courts below, based on certain records and the admission of PW.1 have also come to the conclusion that the possession of the subject property has not been established. There is no material on record to show that the claim of the appellants that they had constructed a house in the subject property has been established. In such circumstances, I find that the contention of the appellants

that the findings of the Courts below are perverse or contrary to the evidence on record, cannot be accepted. All the relevant material has been examined to reject the claim of the appellants for specific performance.

6. With regard to the contention of Mr. Bhobe, to allow the relief in terms of Section 22 of the Specific Relief Act, I find that the appellants have not amended the pleadings to that effect. Apart from that, the Courts below have concurrently found that the agreement itself has not been established and, as such, the question of granting such a relief in a second appeal under Section 100 C.P.C. would not arise. The suit is not based on the loan taken by executing the Hundi.

7. For the aforesaid reasons, I find that there are no substantial questions of law in the present appeal for consideration. The appeal stands accordingly rejected.

F. M. REIS, J.

ssm.