

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.67 OF 2015
WITH
CIVIL APPLICATION NO. 1615 OF 2017**

Sou. Parvati Dasu Thorat	...	Appellant
V/s.		
Vitthal Sarjerao Jadhav	...	Respondent

Mr.Ajay A. Joshi for the Appellant/Applicant.
None for the Respondent.

**CORAM : NITIN W. SAMBRE, J.
DATED : DECEMBER 5, 2017.**

P.C. :

. The second appeal is by the original defendant, who suffered a decree for specific performance of contract.

2. The learned counsel for the Appellant Mr. Ajay A. Joshi while inviting attention of this Court to the provisions of Section 20 of the Specific Relief Act, would urge that discretion exercised by both the Courts below in granting the specific performance based on the Agreement of Sale dated September 20, 2007 is misplaced for the reasons of failure of exercise of discretion.

According to the Appellant he could be adequately compensated by asking payment of compensation, as out of total 90 R. land, 40 R land is ordered to be transferred in favour of the Respondent-Plaintiff.

3. If the aforesaid submissions are appreciated in the background of findings recorded, it is to be noted that the Appellant has come out with the specific defence that the agreement is not the agreement of sale, but there was loan transaction. The Trial court framed issues at Ex.16 and appreciated the defence of the Appellant that the Appellant claimed that the Respondent-Plaintiff has obtained her thumb impression on blank stamp paper. The Trial court also framed an issue as regard readiness and willingness of the Respondent to perform his part of contract and granted the decree for specific performance.

4. The Appellate court confirmed the said decree based on evidence that is brought on record.

5. Once the appellant has come out with a defence that her thumb impression was obtained on blank stamp paper, the burden was on the Appellant to prove the same to which she has failed to discharge.

6. Apart from the above, both the courts below have appreciated the willingness and readiness of the Respondent-plaintiff in execution of the contract.

7. In the wake of above against the concurrent findings, no substantial question of law could be noticed. Second appeal as such dismissed.

8. As consequence of dismissal of second appeal, the pending Civil Application also stands rejected.

(NITIN W. SAMBRE J.)

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