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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

***SECOND APPEAL NO.338 OF 2015
WITH
CIVIL APPLICATION NO.809 OF 2015***

Shaikh Ahmad Shaikh Ramzan
(since deceased) through LR.s. & Ors. ..Appellants.

V/s.

Mehboob Ali Yusufbhai (deceased)
through LR.s. & Ors. ..Respondents.

Mr.A.K.N.Mulla for the Appellants & Applicants.

Coram : N.M.Jamdar, J.

Date : 3 April 2017

P.C.:-

By this appeal, the Appellants have challenged the concurrent Judgments and Orders passed by the learned Civil Judge, Junior Division, Nashik in Regular Civil Suit No.698/2000 dated 2 August 2003 and the learned District Judge, Nashik in Regular Civil Appeal No.297/2003 dated 25 November 2014.

2. The Appellants-Plaintiff filed a suit for specific performance of an agreement dated 10 June 1985. It was the case of the Appellants that Defendant No.1 and his heirs had executed an agreement for sale of the suit land on 10 June 1985 for total

consideration of Rs.80,000/- and at the time of executing the agreement, Rs.5,000/- was paid to each of the Defendants. It was agreed that since the Plaintiff was a non-agriculturist, he will obtain the permission under the Bombay Tenancy and Agricultural Lands Act, 1948, to which the Defendants will co-operate and since the Respondents-Defendants did not execute the sale deed, suit had to be filed. Both the Courts framed issues as regards the legality of the agreement, readiness and willingness of the Plaintiffs. Both the Courts rendered a finding of fact that the Plaintiffs were not ready and willing to perform his part of the contract. Both the Courts held that it was necessary for the Plaintiff to take requisite permission which the Plaintiffs failed to do.

3. The learned counsel for the Appellants-Plaintiffs, firstly submitted that Respondent No.1 had filed a suit against the Appellants for cancellation of the agreement of sale in which a finding was rendered that the Respondents were not ready to perform their part of the contract and the suit was dismissed. He submitted that this aspect has not been considered by both the Courts. This argument cannot be accepted. There is no reference at all to the earlier proceeding in the present proceedings. The argument is being advanced in the second appeal for first time as it was not advanced before both the Courts. There is no reference to the same in the appeal memo before the first Appellate Court as well. Apart from this position, all that has happened by dismissal of the

suit of Respondent No.1 is that, the agreement of sale dated 10 June 1985, is not set aside. It is the Appellants who have sought the specific performance and they must show readiness and willingness if the Appellants are to succeed in grant of decree of specific performance, which is an equitable relief. As far as the aspect of readiness and willingness is concerned, as per the case of the Appellants themselves, the permission under section 63 Bombay Tenancy and Agricultural Lands Act was to be obtained by the Plaintiffs. Both the Courts have recorded findings of fact that this vital permission was not obtained and neither efforts were made in that regard. Without this permission the Plaintiff, a non-agriculturist could not have purchased agricultural land.

4. The learned counsel for the Appellants then sought to contend that Respondent No.1 had issued notice to the Appellants not to deal with the other owners and it is because of this notice, that the Appellants did not take steps to take permission. Again this argument is not advanced before both the Courts. This argument is not a question of law. It is not possible to appreciate such factual aspect for the first time in the second appeal.

5. In these circumstances, if both the Courts have taken note of the conduct of the Appellants in not taking the important permission which was necessary, no fault can be found with the findings rendered by both the Courts. No question of law, much less

any substantial question of law arises. The Second Appeal is dismissed. In view of the dismissal of the Second Appeal, the civil application is also dismissed.

(N.M.Jamdar, J.)