

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

SECOND APPEAL NO. 842 OF 2017

Shri. Udhav Ganpat Surve	... Appellant
Versus	
Shri. Bhadreshkumar Dwarakadas Gandhi	... Respondent

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Mr. Sarang Satish Aradhya for the Appellant.
Mr. Prabhanjan Gujar for the Respondent.

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CORAM : NITIN W. SAMBRE, J.

DATE : 7th DECEMBER, 2017.

P.C.

1. This appeal is by the original defendant in Regular Civil Suit No. 91 of 2004 for specific performance of contract based on the agreement of sale dated 10th August, 2000 - Exhibit-24.

2. It is the case of the present respondent - plaintiff that he has agreed to purchase the suit property for a valuable consideration of Rs. 10,000/-, out of which an amount of Rs. 7,000/- was paid while executing and registering the agreement of sale Exhibit-24 and balance amount of Rs.3,000/- was to be paid at the time of execution of the sale-deed which was on or before 10th August, 2001.

3. The suit preferred by the present respondent-plaintiff came to be decreed vide judgment and decree dated 29th April 2010, which was confirmed in Regular Civil Appeal No. 107 of 2014. As such, this Second Appeal.

4. The learned counsel for the appellant, while trying to impress upon the court to frame question of law pursuant to the provisions of Section 16 of the Specific Relief Act, 1963, would urged that for the alleged sale transaction in question, the agreement of sale was never executed. He never agreed to sell out the suit property and he executed a document agreement for sale as a security for loan transactions between the appellant and the respondent. In addition, the learned counsel for the appellant would urge that the respondent-plaintiff has to demonstrate about their readiness and willingness, particularly from the pleadings in the plaint, and evidence on record. So as to substantiate his contentions, he relied upon the judgment of this Court in the matter of *Shantabai Bhima Sangle and others Vs. Yamunabai Waliba Kedar and others* reported in *2009 (2) Mh.L.J. 499*, particularly paragraph 7 and the decision in the case of *Hemant*

M. Deshmukh and others Vs. Diwakar Dadaji Michkin reported in ***2010(2) Mh.L.J. 411***, so as to canvass that the readiness and willingness of a party has to be continuous and should reflect in the pleadings. The court should not draw the inference from the vague pleadings and the evidence about readiness and willingness.

5. Per contra, the learned Counsel for the respondent-plaintiff would urge that the transaction is of the year 2000 and the agreement of sale - Exhibit-24 is a registered document. According to him the said document was very much proved by examining proper witnesses. Pleading from Exhibit-29, that is the written statement and the notice issued, speaks voluminously about the readiness and willingness of the present respondent to perform his part of the contract.

6. Considering the rival submissions, it is not in dispute that document Exhibit-24, which has formed the basis for initiation of suit for specific performance, was proved by the plaintiff by adducing proper evidence. The appellant's contention that the document was executed as a security was nullified by both the

Courts below as the present appellant has failed to prove the said issue based on his pleadings and evidence.

7. It is then to be appreciated that, in terms of the agreement Exhibit-24, the balance amount was to be paid within one year and the date of execution of sale-deed was also accordingly prescribed.

8. The plaint and the notice issued by the respondent in voluminous terms speaks of his readiness and willingness to perform his part of the contract by keeping ready the balance payment of Rs. 3,000/- provided the present appellant comes out with clear title to the suit property as same was mortgaged with the Land Development Bank.

9. The respondent, in my opinion, in clear terms established readiness and willingness as is rightly observed by both the courts below, and has satisfied the requirement of Section 16 of the Specific Relief Act.

10. Once the respondent-plaintiff having satisfied both the courts below as regards his readiness and willingness to perform

the part of the contract, both the courts below, in my opinion, were right in exercising powers under Section 20 of the Specific Relief Act granting the suit for specific performance.

11. In my opinion, no interference is warranted as the appeal lacks substantial question of law. The Second Appeal, as such, fails and hence dismissed.

(NITIN W. SAMBRE, J.)