

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.102 OF 2014

Habibulla Shaikh Abbas

..Appellant.

V/s.

Vithu Krishna Raul

..Respondent.

Mr.Sanskar Marathe for the Appellant.

Ms. Ranjana Todankar for Respondent No.1.

Coram : N.M.Jamdar, J.

Date : 10 April 2017

ORAL ORDER

Both the trial Court as well as the Appellate Court had dismissed the claim of the Appellant for specific performance of the agreement dated 20 November 1986 and also prayer for injunction.

2. Heard the learned counsel for the parties.

3. The Appellant had filed Regular Civil Suit No.3/2003 which was dismissed by the learned Civil Judge, Junior Division Sawantwadi. Regular Civil Appeal No.148/2010 filed by the Appellant has been dismissed by the learned District Judge, Sindhudurg.

4. As far as specific performance is concerned, both the Courts have recorded finding of fact that the Appellant was not ready and willing to perform his part of the contract. Nothing has been shown as to why the finding which has been rendered after considering the evidence, is perverse. The Appellant was to seek necessary permission for the completion of the agreement. The learned counsel for the Appellant has contended that the Appellant was atleast entitled to grant of injunction having accepted the position that the agreement refers to handing over the possession. This submission cannot be accepted. Both the Courts have referred to the agreement and on evidence they have found that the Appellant was not in possession on the date of filing the suit and, therefore, the injunction has been refused. Once a finding of fact is reached that the Appellant was not in possession, there is no error in refusing to grant injunction more particularly that the Appellant has failed to establish any other right in the suit property. The Second Appeal is accordingly dismissed.

(N.M.Jamdar, J.)