

JPP

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

***SECOND APPEAL NO. 788 OF 2016
with
CIVIL APPLICATION NO. 1559 OF 2016***

Mr. Dhondiba Krishna Ichake
(Since deceased) through his L.Rs.
Mrs. Urmila Arun Dhumal & Ors. ... Appellants/Applicants.

V/s.

Mr. Karbhari Sakharam Pokale
(Since deceased) through his L.Rs.
Mr. Yashwant Karbhari Pokale & Ors. ... Respondents.

Mr. Rahul Kate for the Appellants/Applicants.

Coram : N.M. Jamdar, J.

Date : 27 March 2017.

Oral Order :-

By this Second Appeal the Appellant – Original Plaintiff has challenged the judgment and decree passed by the Civil Judge, Junior Division, Shirur and confirmed in the Appeal by the learned District Judge, Pune to the extent that the relief of specific

performance of the agreement was refused and only a relief of return of earnest money with interest, was granted.

2. An agreement at exhibit 53 was executed between the parties on 2 June 1992. The agreement between the parties was in respect of a land admeasuring 1 hector and 61 ares situated at Village Kawathe, Taluka Shirur, District Pune. The land is situated in the benefit zone of the Dimbhe Dam project. For transfer of such lands permission of the Collector was necessary. It was agreed between the parties that the sale deed will be executed two months after permission of the Collector. A notice was issued by the Appellant – Plaintiff on 24 June 1997 since the Respondent – Defendant did not execute the sale deed. The suit was filed in the year 1998. Both the Courts have held that the Appellant was not ready and willing to perform his part of contract.

3. The learned Counsel for the Appellant submitted that the finding recorded is perverse as the agreement was to be executed after permission from the Collector within two months from the permission from the Collector and since the Respondent did not take any steps, the suit had to be filed and both the Courts were in error in placing the burden on the Appellant.

4. I have considered this submission. The sale deed was to be executed within two months after obtaining permission from the Collector. The sale deed also stipulated in paragraph 8 that the Appellant would bear the expenditure and also taken steps to take the permission. Both the Courts, by appreciating the evidence on record, found that no evidence was led by the Appellant in this regard. Therefore the finding was rightly recorded that the Appellant did not take steps as contemplated in the agreement. From the year 1992 to 1997 i.e. for five years, the Appellant did not take any steps, which position has been rightly considered by both the Courts to conclude that the Appellant was not ready and willing to perform his part of contract. There is no perversity in arriving at this factual finding.

5. In the circumstances, no substantial question of law arises. The Second Appeal is dismissed. The Civil Application does not survive and is disposed of accordingly.

(N.M. Jamdar, J.)