

SECOND APPEAL NO. 138 OF 2017

Ms.Sulbha A. Dhamle for Appellant.
Mr.Sandeep Shinde for Respondent.

16 MARCH 2017

Heard learned Counsel for the parties.

3 In the year 1997, the predecessor-in-title of the Appellant herein (original Defendant) filed a suit against the Respondent herein (original Plaintiff) for a declaration and injunction. A compromise pursis was filed by the parties in that suit. Clause 3 of the compromise pursis contained an agreement between the parties that if the predecessor-in-title of the Defendant or her family member wants to sell the suit property to any third party, the Plaintiff would have a preferential right to purchase the same as per the market rate. The present suit was filed by the Plaintiff in the year 2011 seeking to enforce this preferential right to purchase the suit

land. The suit was decreed in favour of the Plaintiff. The Defendant carried the matter in appeal before the District Court. The appeal was dismissed by the District court. Hence, the present second appeal.

4 Both courts below have come to a concurrent finding that the Plaintiff had proved his preferential right to purchase the suit land in accordance with the terms of compromise in the suit of 1997. The only substantial questions of law pressed by learned Counsel for the Appellant (original Defendant) are that (i) the decree passed by the court in the suit of 1997 was merely in terms of clause 2 of the compromise pursis and not clause 3 thereof, which contained the alleged agreement for the Plaintiff's preferential right to purchase the suit property, and (ii) the suit of 1997 was between the predecessor-in-title of the Defendant, and the Plaintiff and three others, and that these three others are not parties to the present suit, which is accordingly liable to be dismissed for non-joinder of necessary parties.

5 There is no merit in either of these grounds. The compromise pursis makes it very clear that the Plaintiff herein had a preferential right to purchase the suit property according to the market rate as and when the Defendant's predecessor-in-title or any member of her family (which would include the Defendant) proposed to sell the suit property to any third party. The decree passed by the court in pursuance of this compromise pursis shows that the suit was compromised in terms of compromise pursis (referred to as Exhibit 16 in that suit) and that an order was, accordingly, passed thereon. Though the order does mention that the decree be drawn accordingly "*as per clause no.2 of Exhibit 16*", it cannot possibly be suggested that the suit was compromised, or that the order was passed on

such compromise, only in terms of clause 2 of the pursis. In any event, it cannot be gainsaid that the compromise between the parties, which is not disputed, included the term of preferential right of the Plaintiff to purchase the suit land. If not the final decree, the compromise taken on record would call for and sustain a claim of specific performance. As for the joinder of other parties, it is pertinent to note that in the written statement filed by the Defendant, there was no defence on account of non-joinder of any necessary parties. Naturally, the point finds no mention in the judgment of the trial court. In the appeal memo filed before the first lower appellate court also, no such ground is raised. Firstly, it is not permissible to raise such a ground for the first time in the second appeal. Secondly, and even otherwise, the record indicates that the Defendant himself had called upon the Plaintiff to purchase the suit property in pursuance of the compromise pursis, referred to earlier. The case of the Defendant before the trial court was that the Plaintiff did not show his willingness to purchase the suit land and thus, failed to comply with clause 3 of the compromise pursis. Whether or not the Plaintiff did so is the subject matter of the suit. Other parties to the compromise are not necessary parties for such a suit.

6 There is, accordingly, no merit in the second appeal. The second appeal is dismissed. No order as to costs.

7 In view of the disposal of the second appeal, the civil application does not survive and the same is also disposed of.

8 Learned Counsel for the Appellant applies for stay. Two courts below having decreed the suit against the Appellant / original Defendant,

and second appeal being summarily dismissed by this court, there is no question of granting any ad-interim relief. Hence, the application is rejected.

(S.C. GUPTE, J.)