

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 32 of 2016
[Gangadhar Nago Amrutkar & another Vs. Poonamchand Bhawarlal Soni & another]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. N. B. Bargat, Adv., for the appellants.

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CORAM : A. S. CHANDURKAR, J.

DATE : 07th July, 2017

The defendants who are aggrieved by the decree for specific performance passed by the trial Court and affirmed by the appellate Court have filed the present Second Appeal.

It is the case of the plaintiffs that on 9th July, 2007, the appellants agreed to sell the suit property for a consideration of Rs. 5,75,000-00. Earnest amount of Rs.1,00,000-00 was paid and sale-deed was to be executed by 9th August, 2007. On 8th August, 2007, the defendants sought extension of time to execute the sale-deed on the ground that their daughters had come to reside with them as the daughters' house had collapsed. The time was extended to 10th October, 2007. As the sale-deed was not executed by said date, the plaintiffs filed suit for specific performance after issuing notice.

In the Written Statement, a stand was taken that the plaintiffs were not ready and willing to perform their part of the agreement. It was further pleaded that the subsequent agreement dated 8th August, 2007 had been fraudulently obtained and, therefore, the suit was liable to be dismissed.

The trial Court held that the plaintiffs had proved both the agreements and payment of Rs.1,00,000-00 as earnest amount. After holding that the plaintiffs were ready and willing to perform their part of the agreement, the suit was decreed. The appellate Court confirmed the aforesaid finding.

Shri Bargat, learned counsel for the appellants, submitted that the agreement dated 8th August, 2007 was obtained fraudulently. While entering into the first agreement, the signatures of the defendants were taken on blank stamp papers and, therefore, the subsequent agreement was not binding. He then submitted that the suit property was ancestral property and the daughters had not signed the agreement. It was, therefore, submitted that both the Courts erred in granting a decree for specific performance.

Perusal of the material on record indicates that after the execution of the first agreement on 9th July, 2007, amount of Rs.1,00,000-00 was paid as earnest amount. As the house of the defendants' daughters had

collapsed, they requested for extension of time to execute the sale-deed and as per agreement dated 8th August, 2007, this time was extended. It has been found that the agreement at Exh.41 was scribed on the stamp paper purchased on the same day. Hence, the Courts have not accepted the defence that the signatures of the defendants were obtained while signing the first agreement. Similarly, names of the daughters did not figure in the first agreement dated 9th July, 2007. Merely because some space has been left on the second agreement dated 8th August, 2007, it cannot be said that the property was ancestral property. It has been found that this stand was not taken in the Written Statement.

In view of aforesaid, I do not find that the appeal gives rise to any substantial question of law. The same is accordingly dismissed. No costs.

Judge