

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.456 OF 2017

Veena w/o Deepak Khadane

... Appellant.

-vs-

Surekha w/o Prabhakar Khade

... Respondent

Shri Vikas Kulsange, Advocate for appellant.
Shri C. S. Samudra, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.
DATE : AUGUST 22, 2017

P.C.

This appeal has been preferred by the legal heir of the original defendant who is aggrieved by the decree for specific performance passed by the trial Court and confirmed by the appellate Court.

2. According to respondent-plaintiff an agreement dated 13/07/2008 for sale of 1350 sq.ft. land was entered into with the original owner Shri Pundalik Awachat. The total consideration fixed was Rs.13,75,000/- and the sale deed was to be executed by 15/05/2009 as necessary permission was to be obtained from the Authorities for having the sale deed executed. The plaintiff paid an

amount of Rs.7,00,000/- to the original defendant. As the necessarily permission was awaited, a supplementary agreement dated 03/07/2009 came to be entered into. It was agreed that sale deed would be executed within a period of one month from the grant of necessary permission. The plaintiff after issuing notice filed suit for specific performance.

3. According to the defendant the agreement of sale was admitted along with receipt of earnest amount. Though steps were taken to obtain the necessary permission, the same was awaited. According to the defendant, though he had received the amount of Rs.7,00,000/- he was willing to return the same.

Parties led evidence before the trial Court which held in favour of the plaintiff. It passed a decree for specific performance which was confirmed by the appellate Court.

4. Shri V. Kulsange, learned counsel for the appellant submitted that there was a specific clause in both the agreements that it was necessary to obtain permission from the competent Authority for executing the sale deed. Though steps were taken to obtain such permission, no such permission was granted till date. It was further submitted that this aspect of the matter was not considered

by both the Courts while decreeing the suit. In the alternate it was submitted that the appellant was ready to refund the amount received from the plaintiff with interest.

5. Shri C. S. Samudra, learned counsel for the respondent supported the impugned judgment. According to him, the appellant is the grand-daughter of the original defendant. She had signed the agreements dated 17/07/2008 and 03/07/2009 as a witness. Certain amounts were also received by her husband on behalf of the defendant. It was submitted that it was for the defendant to have obtained the necessary permission. The decree as passed was subject to such permission being obtained for selling the suit property. It was therefore submitted that both the Courts rightly held in favour of the original plaintiff.

6. I have heard the learned counsel for the parties at length and perused the material placed on record. It can be seen from agreements dated 13/07/2008 and 03/07/2009 that the present appellant has signed both the agreements as a witness. The original defendant admitted both the agreements and receipt of earnest amount. It is on that basis that both the Courts have held in favour of the plaintiff. The suit has been filed shortly after the

supplementary agreement was entered into. Hence the discretion exercised is in accordance with provisions of Section 20 of the Specific Relief Act. The agreements being duly proved and the plaintiff having been found to be ready and willing to perform her part of the contract, there is no question of directing refund of the earnest amount.

7. As regards to submission that the no objection certificate was still awaited and therefore specific performance was not liable to be granted, that contention cannot be accepted. The decree for specific performance can always be passed and it can be made subject to obtaining such permission as is necessary from the competent authority. Moreover, it is not brought on record that such permission has been refused by the competent Authority. Hence on that count, relief cannot be refused to the plaintiff.

8. In view of aforesaid, I do not find any perversity in the impugned judgment. The appeal does not give rise to any substantial question of law. Second Appeal is therefore dismissed with no order as to costs.

JUDGE