

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 215 of 2016
[Keshaovrao Ramchandra Tabhane & another Vs. Arvind Jagoji Chandekar]

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

Court's or Judge's orders

Mr. S. D. Malke, Adv., for the appellants.
Mr. I. J. Damle, Adv., for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : 05th July, 2017

The appellants are the original defendants who are aggrieved by the decree for specific performance passed by the trial Court which is affirmed by the appellate Court.

According to the plaintiff, on 16th February, 2005, the defendant no.1 who was the owner of field Survey No. 37/P-1 had entered into an agreement for sale of aforesaid property. Name of defendant no.2 who is the son of defendant no.1 was also mentioned as he had agreed to sell his field, being Survey No. 37/2. Consideration agreed was Rs.1,97,000-00 and earnest amount of Rs. 50,000-00 was paid. After converting the land, sale-deed was to be executed by 16th August, 2005.

The trial Court has held that though the

agreement dated 16th February, 2005 was not signed by the defendant no.2, in his deposition, he clearly admitted that he had consented for said transaction and that he had no objection in that regard. After holding that the plaintiff was ready and willing to perform his part of the agreement, the suit was decreed. The appellate Court concurred with the trial Court.

Shri Malke, learned counsel for the appellants, submitted that in absence of any signature of defendant no.2 on the agreement dated 16th February, 2005, the suit could not have been decreed. He submitted that both the defendants were owners of separate lands and mere signature of defendant no.1 would not bind defendant no.2. He then submitted that finding with regard to readiness and willingness was not arrived at properly.

Shri Damle, learned counsel for the original plaintiff, supported the impugned judgments. He referred to the deposition of defendant no.2 and his admissions in the cross-examination to indicate that he had consented to sell his land. The finding regarding readiness and willingness was also rightly reached.

Perused the impugned judgments as well as the evidence of the parties.

Though it is a fact that the agreement dated 16th

February, 2005 [Exh.34] was not signed by the defendant no.2, he in his cross-examination specifically admitted that he had consented for this agreement and that he along with his father had received the earnest amount. Reading of his entire cross-examination indicates that he had no grievance, whatsoever, with regard to agreement dated 16th February, 2005.

In so far as readiness and willingness is concerned, the sale-deed was to be executed on 16th August, 2005. The plaintiff after issuing notices [Exhs.44 & 38] immediately filed the suit for specific performance on 28th September, 2005. The defence that the plaintiff had telephonically informed the defendants that the sale-deed could not be executed for want of funds has been disbelieved by both the Courts. Considering the conduct of the plaintiff along with all surrounding circumstances, the finding with regard to his readiness and willingness has been properly arrived at.

In view of aforesaid, the Second Appeal does not give rise to any substantial question of law. The same is accordingly dismissed. No costs.

Judge