

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

CIVIL APPLICATION (CAS) NO.981 OF 2017
IN
SECOND APPEAL ST. NO.3941 OF 2017

Kamalkishore s/o Sitaramji Sarda, Cultivator, Umrer, Dist. Nagpur.

-vs-

Ranjana wd/o Shantara Bhagat and ors.

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

Court's or Judge's Orders.

Shri P. R. Puri, Advocate for applicants/appellants.
Shri A. S. Moon, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : September 27, 2017

Though the prayer for condoning delay is strongly opposed by learned counsel for the non-applicants, considering reasons mentioned in paragraphs 3 and 4 of the application, the delay stands condoned.

Civil application stands allowed.

S.A.St. No.3941 of 2017

The appellants are the original plaintiffs who are aggrieved by the decree passed by the trial Court for refund of earnest amount.

According to the plaintiffs they are entitled for decree of specific performance of agreement dated 08/05/2000. It is the case of the original plaintiffs that

agricultural land owned by the defendants was agreed to be sold to the plaintiffs for a consideration of Rs.1,00,000/- on 08/05/2000. An amount of Rs.40,000/- was paid as earnest amount. As the defendants did not take any steps in the matter, the plaintiffs issued a notice on 26/02/2007 and thereafter filed suit for specific performance.

According to the defendants, the earlier sale deed executed by them on the same date was admitted. The agreement was however denied. It was further denied that the plaintiffs were ready and willing to perform their part of agreement.

The trial Court recorded a finding that the agreement was entered into only with defendant No.1. After finding that the plaintiffs did not take any steps whatsoever for a period of almost seven years, it was held that they were not ready and willing to perform their part of agreement. Hence relief of specific performance was refused and the earnest money was directed to be refunded with interest. The appellate Court confirmed the finding.

Shri P. R. Puri, learned counsel for the appellants

submitted that the defendants did not comply with the conditions of the agreement for having their names mutated in the revenue record. Though it was agreed by defendant No.1 to have the revenue records corrected, the same was not done. He submitted that in terms of the agreement, the plaintiffs were always ready with the balance consideration and hence the decree for specific performance ought to have been passed.

Shri A. S. Moon, learned counsel for the respondents supported the impugned judgment. He submitted that for a period of seven years, no steps were taken by the plaintiffs to have the transaction completed. Hence no interference was called for.

Perused the impugned judgment. Both the Courts after considering the evidence on record have found that the agreement was entered into only with defendant No.1. After 08/05/2000 the plaintiffs did not take any steps whatsoever and only on 25/02/2007, a notice was issued to the defendants. The suit was thereafter filed on 20/06/2007. Considering the aforesaid, it cannot be said that the finding recorded by both the Courts as to absence of plaintiffs' readiness and willingness is

contrary to the evidence on record. The plaintiffs have waited for almost seven years before seeking the relief of specific performance. Hence the second appeal does not give rise to any substantial question of law. Same is therefore dismissed. No costs.

JUDGE