

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

Second Appeal No.91 of 2016
(Vinayakrao Vithalrao Deshmukh (Dead), through LRs Nirmalabai wd/o
Vinayakrao Deshmukh and others v. Nayabrao s/o Rambhau Deshmukh)

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

Shri Ritesh Badhe, Advocate for Appellants.
Shri P.S. Kshirsagar, Advocate for Respondent.

Coram : R.K. Deshpande, J.
Date : 8th March, 2017

The Trial Court passed a decree for specific performance of contract in Regular Civil Suit No.87 of 2000 on 4-10-2008. The lower Appellate Court has dismissed Regular Civil Appeal No.90 of 2008 on 24-11-2015. Hence, the original defendant is before this Court in this second appeal.

Shri Badhe, the learned counsel appearing for the appellants, submits that the agreement dated 11-6-1994 at Exhibit 30 has not been proved and that the suit should have been dismissed as barred by the law of limitation.

On the aspect of proof of agreement, it is the contention raised by the appellant-defendant that a blank stamp paper signed by the defendant was handed over to one Shri Patkar, and

on it, the agreement was written without his knowledge. Thus, the signature on the agreement is not denied, but the contents are disputed. The appellant-defendant has failed to examine Shri Patkar, to whom it is alleged that the blank stamp paper duly signed was delivered. Shri Badhe submits that Shri Patkar was examined as a witness by the plaintiff, but he could not be cross-examined, as his presence could not be secured. If Shri Patkar is not cross-examined, his examination-in-chief would not be admissible in evidence. However, that does not mean the discharge of burden by the appellant-defendant to establish that he handed over the blank stamp paper duly signed to Shri Patkar, on which the agreement was written. The contention does not give rise to any substantial question of law.

On the aspect of limitation, it is not in dispute that the agreement dated 11-6-1994 was in writing, and the sale-deed was to be executed in terms of this agreement after the plaintiff was given an intimation about the measurement of land. The Courts below have recorded the finding that no such intimation was given by the plaintiff to the defendant, and in the absence of any date being fixed in the agreement for execution of the sale-deed, the suit filed in the year 2000 on the basis of the notice issued on 7-3-2000 calling upon the defendant to execute the sale-deed was within a period of limitation. Thus, no substantial question of law arises out of the aspect of limitation.

I have gone through the agreement dated 11-6-1994 at Exhibit 30, which shows that the total consideration agreement was of Rs.20,000/-, out of which an amount of Rs.15,000/- was also paid in the month of June, 1991. The plaintiff was in possession of the suit property from 1980-81 and the balance amount of consideration of Rs.5,000/- was paid on the date of entering into an agreement to sell on 11-6-1994. Therefore, nothing remains to be paid towards consideration by the plaintiff to the defendant. The only requirement was of execution of sale-deed, which the defendant appears to have refused in spite of receiving the notice for that purpose.

Thus, no substantial question of law arises for consideration. The second appeal is dismissed.

Judge.

Lanjewar