

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

SECOND APPEAL NO.209 OF 2017

(Balkrishna Laxman Dakhare & others
 vs.
 Devrao Govinda Pauniar)

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

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Court's or Judge's Orders

CORAM : V.M. DESHPANDE, J.
DATE : 29th NOVEMBER, 2017.

Heard Shri T.S. Deshpande, learned Counsel
 for the appellants and Shri Abdul Subhan, learned
 Counsel for the respondent sole.

02] Two suits were filed in the Court of Civil
 Judge Junior Division, Maregaon, District Yavatmal.
 Appellant no.1 herein viz. Balkrishna filed a suit
 against the sole respondent in the present appeal for
 possession of agricultural land and enquiry for mesne
 profit. The said suit was registered as R.C.S.
 No.33/2001. Another suit i.e. R.C.S. No.39/2001 was
 filed by respondent-Devrao against the appellants for
 specific performance of contract of the agricultural
 land. Since the subject matter of both these suits
 were same, both the suits were tried simultaneously

and common evidence was recorded in R.C.S. No.33/2001.

03] According to the plaint allegations in R.C.S. No.33/2001, the agricultural property was owned by father of the predecessors in title of the appellants, and the plaintiff in R.C.S. No.39/2001 was trying to dispossess.

04] As per the claim in R.C.S. No.39/2001, i.e. the suit for specific performance of contract, the appellants in the present appeal agreed to sale the suit land by accepting earnest amount of Rs.20,000/- and they executed an agreement to sale on 06/04/2000. The possession of the suit land was also delivered at the time of execution of agreement, and it was agreed that balance amount of consideration to be paid at the time of execution of sale-deed and agreed date was 31/03/2001. Subsequent to the execution of agreement, an amount of Rs.25,000/- was paid on 05/02/2001 towards part payment of the sale consideration. Thus, total amount of Rs.45,000/- out of the agreed consideration of Rs.50,000/- was remained to be paid. According to the plaint, on

agreed date, for execution of sale-deed though vendee was present in the office of the Sub-Registrar at Maregaon from 10:30 a.m. till 05:30 p.m. with balance consideration, however, vendors failed to attend the Office of Sub-Registrar, consequently the sale-deed was not executed. Thereafter, the suit was filed.

05] As per the appellants, defence of the appellants in the suit filed by the respondent was that it was a money lending transaction and the possession was not handed over. Necessary issues were framed. The learned trial Court dismissed the suit filed by appellant no.1 for possession, whereas granted decree for specific performance of contract in the suit filed by the respondent.

06] Though two different appeals ought to have been filed by the appellants before the appellate Court, a common appeal was filed i.e. R.C.A. No.3737/2010 with a prayer that the judgment and decree delivered against them in both the suits be set aside. The learned Ad hoc District Judge-1, Kelapur vide judgment and decree dated 30/11/2016

dismissed the said appeal and thereby confirmed the judgment and decree passed by the trial Court.

07] It is not in dispute that the respondent was in possession. However, according to appellant no.1, the respondent obtained forceful possession. The Court below has found that the name of the respondent was appearing in the 7/12 extract i.e. revenue record for 2002-03 and his name was shown in cultivation column. Further, no criminal case was registered against the respondent for obtaining forceful possession. The learned trial Court and the appellate Court after appreciating the evidence brought on record, in my view, correctly recorded the finding that the respondent was in lawful possession of the suit property.

08] The only argument in respect of the suit for specific performance of contract is concerned as advanced before this Court is that, according to the learned Counsel for the appellants, the trial Court ought to have granted damages in favour of the respondent rather than granting decree of specific performance of contract. I am afraid that his

argument has no merit especially when both the Courts below after considering the nature of evidence, exercised discretion in favour of the respondent for grant of decree for specific performance. Further, both the Courts below concurrently recorded a finding that agreement in question was not the outcome of money lending transaction, as pleaded by the appellants. No substantial question of law emerges in the present second appeal. Hence, it is rejected with no order as to costs.

**sdw*

JUDGE