

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

Second Appeal No.201 of 2015
(Govindrao s/o Gehimal Mirpuri v. Jaswant s/o Likumal Arya and another)

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

Shri N.R. Kanungo, Advocate, holding for Shri S.S. Voditel,
Advocate for Appellant.

Shri Anand S. Deshpande, Advocate for Respondents.

Coram : R.K. Deshpande, J.

Date : 11th January, 2017

The matter was adjourned on earlier four occasions at the request of the appellant. It was listed thereafter on the board published on 4th January, 2017.

This matter was called out on 4th, 5th, 6th, 9th and 10th January, 2017 for admission. Every time, it was passed over. Yesterday when the matter was called out, Shri Voditel, the learned counsel for the appellant, appeared and made an attempt to argue the matter. However, it was found that he was unable to answer the Court's questions and point out the basic facts and relevant findings or even the dates of agreements on which the appellant-plaintiff placed reliance for seeking specific performance of contract. In order to avoid the loss being caused to the appellant-plaintiff, the matter was adjourned.

Today when the matter is called out, none appears for the appellant. Shri Deshpande, the learned counsel, appears for the respondents.

Shri Deshpande, the learned counsel for the respondents, submits that the respondent No.1 has expired and, therefore, he represents the respondent No.2, the original defendant.

The Trial Court records the finding that the plaintiff has established the agreement to sell the suit property for the consideration of Rs.2,00,000/-. The agreements were dated 3-9-1988 and 26-2-1994. The Trial Court, however, holds that the plaintiff has failed to establish readiness and willingness on his part to perform the contract. The Trial Court also records the finding that the suit was barred by the law of limitation.

The lower Appellate Court holds that the agreements to sell are not proved. It further holds that the question of readiness and willingness on the part of the plaintiff to perform contract becomes redundant. It reverses the finding of the Trial Court on the question of limitation and holds that the suit was within a period of limitation.

The Trial Court holds that both the agreements are

marked as Exhibits 76 and 77 without any objection and hence they are held to be proved. The lower Appellate Court takes into consideration this aspect in para 19 of its judgment and order and holds that merely because the document is marked as Exhibit, it does not dispense with proof. The scribe of the document has not been examined and the contents of the document are not proved. In paras 18 and 19, the lower Appellate Court has discussed both the agreements at Exhibits 77 and 76 respectively. It is held that the agreements have not been proved. Thus, the findings recorded by both the Courts below do not give rise to any substantial question of law, being a possible view of the matter.

At this stage, Shri N.R. Kanungo, Advocate, appears in the matter and seeks an adjournment on the ground that Shri S.S. Voditel, Advocate, is to arge the matter and he is out of station. Yesterday, the matter was kept today at the request of Advocate Shri Voditel. It is not possible now to accommodate him.

The second appeal is dismissed.

Judge.

Lanjewar