

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

Second Appeal No.259 of 2015

(Dr. Vasant Rao s/o Ganpat Rao Gurjar v. Jyoti wd/o Deepak Rao Bhopale and others)

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

Shri A.V. Khare, Advocate for Appellant.
Shri A.M. Ghare, Advocate for Respondents.

Coram : R.K. Deshpande, J.

Date : 19th January, 2017

The question involved in this second appeal relates to specific performance of contract to sell the 1/7th share in the suit property by the defendant No.1-Jyoti. In respect of the remaining shares in the same property, it is not in dispute that all other co-sharers have already executed the sale-deed at Exhibit 49 in favour of the plaintiff.

In order to substantiate the claim for specific performance of contract, the reliance is placed on the document dated 31-12-1995 at Exhibit 55. The question of interpretation of this document is considered by both the Courts below. The Trial Court holds that it is an agreement to sell executed by the defendant No.1-Jyoti in favour of the plaintiff. The lower Appellate Court holds that this is not an agreement to sell, but a

mere letter expressing a desire to sell the property.

With the assistance of the learned counsels appearing for the parties, I have gone through the findings recorded by both the Courts below and the contents of the document at Exhibit 55. The lower Appellate Court has held that the document at Exhibit 55 cannot be termed as a contract for sale of the property. The relevant findings are in para 22 of the judgment of the lower Appellate Court, which is reproduced below :

“22] On perusal of document (Exh.55) as pointed above, it reveals that it is merely a desire to sell the property. At any rate it cannot be considered as a contract because the author of the said document unequivocally expressed her desire that she will give consent for the agreement only on the condition that if the consideration amount is paid to her. The parties between whom the agreement is executed, amount of consideration, the date of execution of sale deed and delivery of possession, the mode of payment etc. are absent in the said document. It cannot be said to be a concluded contract. The alleged signature of defendant no.1 is in slanting position. Similarly, the PW-3 has put his signature on the overleaf of the page and as a witness not as a scribe. Even other witness and plaintiff also signed on the overleaf of the page when there was sufficient space on the front page. The ink on the front page used is black and the ink used on the overleaf is blue. The entire contents including signature of

the front page is in Marathi language whereas the contents i.e. purchaser, witnesses including their names and signatures on the overleaf of the page is in English language. This difference in the text and tenor of the document (Exh.55) ought to have been explained by the plaintiff. The plaintiff has not given any plausible explanation to that effect. The document from its appearance create doubt about its existence. Even the said document was confronted with the defendant no.1 during her cross-examination, she denied of executing the same and even denied her signature over it. No endeavor has been taken by the plaintiff to prove that the said signature over the document (Exh.55) is of the defendant no.1. Therefore, the said document cannot be termed as document by which the defendant no.1 agreed to sell the share of defendants in the suit property.”

After going through the contents of the document at Exhibit 55, I think it is a possible view of the interpretation taken by the lower Appellate Court, which does not give rise to any substantial question of law.

The second appeal is dismissed.

Judge.

Lanjewar