

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**NAGPUR BENCH : NAGPUR****Second Appeal No.265 of 2016****[T. Sumitra Bharti T. A. Setty Vs. Vijay Ramchandra Balani & another]**

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

Mr. Rohit Joshi, Adv., for the appellant.

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CORAM : A. S. CHANDURKAR, J.**DATE : 30th June, 2017**

The appellant is the original plaintiff. She is aggrieved by the dismissal of suit for specific performance of agreement dated 16th December, 1989. The appeal filed by her has also been dismissed.

According to the plaintiff, agreement dated 16th December, 1989 for purchase of Plot No.34 for a consideration Rs.19,500-00 was entered into. Various amounts were paid till 10th October, 1991. However, the defendant no.1 avoided to execute the sale-deed and ultimately on 12th September, 2002 sold the said property to the defendant no.2. In this backdrop, the aforesaid suit came to be filed.

The defendant no.1 took the stand that he was not the owner of the property on the date of the agreement and that he became owner subsequently. It was further pleaded that the plaintiff was never ready

and willing to perform his part of the agreement.

Perusal of the judgments of both the Courts indicates that the last payment made by the plaintiff was on 10th October, 1991, after which no steps were taken to complete the contract. In 2002, the defendant no.1 sold the suit property to the defendant no.2 and after that on 9th December, 2003, the plaintiff issued a notice. The suit was filed on 15th April, 2004. In these circumstances, it was held that the plaintiff had not proved readiness and willingness and that for a period of more than ten years, no steps were taken.

Considering aforesaid facts, the Second Appeal does not give rise to any substantial question of law. The same is accordingly dismissed. No costs.

Judge