

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

Second Appeal No.493 of 2015
(Arun s/o Natthuji Bhende v. Gokuldas s/o Mohanlal Maniyar)

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

Shri Sanjay Patrikar, Advocate for Appellant.

Coram : R.K. Deshpande, J.
Date : 17th January, 2017

The Trial Court passed a decree for refund of earnest money of Rs.1,00,000/- to the plaintiff. The lower Appellate Court has reversed the decree passed by the Trial Court and the suit has been dismissed. Hence, the original plaintiff is before this Court in this second appeal.

It is not in dispute that there was an agreement to sell the suit property executed by the defendant in favour of the plaintiff, vide *Bayana Patra* at Exhibit 25. The case of the defendant was that he has repayed an amount of Rs.1,00,000/- taken by way of earnest money to the plaintiff, and the plaintiff has returned the original *Bayana Patra* to him, which he produced before the Trial Court.

The Trial Court holds that the names of the witnesses in

whose presence such an amount of Rs.1,00,000/- was paid to the plaintiff, are not stated in the written statement. It further holds that the date of return of such amount is also not stated. The lower Appellate Court has considered these findings in para 19 of its judgment, which is reproduced below :

“19] It appears that the above said observation of the learned trial Court are not correct in the light of facts, evidence and circumstances on record, as discussed above. It is seen that the learned trial Court has misdirected itself while considering the evidence both oral and documentary on record and come to the wrong conclusion. It is seen that there is no whisper in the impugned Judgment and Decree in what circumstances the original token Bayana Patra comes into the custody of the defendant, from the custody of plaintiff, so also, there is no satisfactory explanation regarding it from the side of plaintiff. When the token Bayana Patra (Exh-25) is found in the hands of defendant/appellant the prima-facie presumption is that after receiving the amount from the defendant, the plaintiff had handed over the same to him. The plaintiff has failed to discharge the burden that the defendant came into possession of Exh-25 unlawfully. The onus was on him to prove it.

Mr. Patrikar, learned Advocate for the respondent

contended that as the appellant fails to obtain the acknowledgement/receipt from the respondent after the alleged repayment of amount, therefore, the story of the respondent should not be believed. With due respect, I am not in agreement with the submission of Mr. Patrikar because when, the original token Bayana Patra is returned to the defendant by the plaintiff, then it was absolutely not necessary for the defendant to get note on it under the signature of plaintiff that he received earnest amount from him and no much importance can be given for not taking the signature of plaintiff on original token Bayana Patra after repayment of Rs.1 lac.”

The findings are based upon appreciation and re-appreciation of evidence. No substantial question of law arises for consideration.

The second appeal is dismissed.

Judge.

Lanjewar