

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.258 of 2014
[Krushnarao Shioramji Shirpurkar Vs. Ashok Nathmalji Rathi]

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

Court's or Judge's orders

Mr. A. C. Dharmadhikari, Adv., for the appellant.
Mr. A.S. Dharaskar, Adv., for respondent.

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CORAM : A. S. CHANDURKAR, J.

DATE : 14th August, 2017

This appeal has been filed by the original defendant who is aggrieved by the decree for specific performance passed by the appellate Court.

According to the respondent-plaintiff, on 24th June, 1991, the defendant entered into an agreement to sell a portion of Plot No.16 for a consideration of Rs.40,000/-. Rs.20,000/- was paid as earnest amount and the sale-deed was to be executed by 31st May, 1993. According to the plaintiff, a notice dated 2nd August, 1993 calling upon the defendant to execute the sale-deed was issued; but as no sale-deed was got executed, suit for specific performance was filed.

According to the defendant, the transaction between the parties was a loan transaction. This transaction took place between the plaintiff's brother and the defendant. The defendant was in need of money for the marriage of his daughter and hence the aforesaid amount came to be borrowed. The document as executed was towards security.

After the parties led evidence, the trial Court dismissed the suit. The first appellate Court, however, decreed the suit and directed execution of the sale-deed after enhancing the amount of sale consideration.

Shri A.C. Dharmadhikari, learned counsel for the appellant, submitted that the transaction between the parties was a loan transaction. As the defendant was in need of money for the marriage of his daughter, the amount was borrowed from the plaintiff's brother. He submitted that the other portion of the suit property was already purchased by the defendant. There were proceedings under Section 145 of the Code of Criminal Procedure between the parties and these proceedings have been treated to be a cause of action for filing the present suit. It was then submitted that the defendant only admitted his signature on the agreement and its contents were not proved. The witness examined by the plaintiff gave evasive answers as he was not sure about the document itself. He also submitted that there was no

evidence led on behalf of the plaintiff to indicate the manner in which the amount of consideration was collected and paid to the defendant. There was no evidence even on that part. It was, therefore, submitted that the trial Court had rightly dismissed the suit and the appellate court erred in allowing the appeal.

Shri Dharaskar, learned counsel for the respondent, supported the impugned decree. According to him, the agreement in question was duly proved. The defendant had failed to lead any evidence to indicate that the amount was borrowed as loan transaction. The brother of the plaintiff could have been summoned for being examined; but that was not done. According to him, the attesting witness was deposing after almost twelve years and, therefore, he could not recollect the manner in which the agreement was prepared. He submitted that the appellate Court rightly held the plaintiff to be ready and willing to perform his part of the agreement. Notice dated 2nd August, 1993 by the plaintiff was also not replied.

I have heard the learned counsel for the parties at length.

The agreement dated 24th June, 1991 as well as subsequent agreement dated 10th June, 1992 by which the time was extended to have the sale-deed executed by 31st May, 1993 have been duly proved. In the

agreement dated 10th June, 1992 at Exh.64, it was found that there was no recital of any loan being borrowed by the defendant. Though it was the stand of the defendant that the entire amount was repaid, there is no evidence brought on record to that effect. Except admitting the signature on that agreement, the defendant did not seek to challenge its contents before the trial Court. The notice dated 2nd August, 1993 calling upon the defendant to remain present has also not been replied. Though it is true that the attesting witness could not recollect the relevant aspects as to the execution of the agreement, I find that on a preponderance of probabilities, the appellate Court has found that such agreement was duly entered into and the plaintiff had taken various steps to have the sale-deed executed. Though it was urged that the plaintiff remained present on 30th May, 1993 for having the sale-deed executed and said date was not the agreed date, that aspect cannot assist the defendant, inasmuch as within three months, a notice came to be issued to him. There was no reply to the said notice. The suit was filed immediately thereafter. Hence, considering the overall evidence on record, I find that the appellate Court has taken a possible view of the matter. It has further enhanced the amount of consideration by Rs.1,00,000-00 considering the time taken for deciding the suit. I find the consideration as enhanced and the appreciation of evidence by the appellate Court to be reasonable. In absence of any perversity, I am not inclined to interfere

in the Second Appeal. The same does not give rise to any substantial question of law. It is accordingly dismissed. No costs.

Judge

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