

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

SECOND APPEAL NO.43 OF 2016

SMT. SHOBHA D/O RAMRAO KASHIKAR
VS

WASUDEORAO S/O ATMARAM BORKUTE (DEAD) THROUGH LTS AND OTHERS

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

Court's or Judge's orders

Shri A. R. Prasad, Advocate for the applicant.
Shri A. M. Ghare, Advocate for respondent Nos.1(A), iii(c), 2 & 3. to 9.

CORAM : A.S. CHANDURKAR, J.
DATED : JUNE 16, 2017.

The appellant is the original plaintiff who is aggrieved by the refusal of relief of specific performance of agreement dated 2-2-1998. It is the case of the appellant that the house property belonging to original defendant no.1 was agreed to be sold for consideration of Rs.85,000/- out of which earnest amount of Rs.50,000/- was received. Though the appellant was ready and willing to perform her part of the contract, the transaction was not completed. The defendants took the stand that there was no such agreement entered into and amount of Rs.40,000/- was given to the tenant by way of loan.

The trial Court as well as the appellate Court have held that the appellant failed to prove the agreement dated 2-2-1998. While doing so, the deposition of the appellant at Exhibit-25 as well as the deposition of Narendra Dalvi – PW-2 was taken into consideration. It was found that their

evidence was not consistent due to which a doubt was created with regard to the existence of the agreement itself. It was found that in the appellants cross-examination she had admitted that no such agreement had taken place.

Though the learned Counsel for the appellant sought to rely upon the aforesaid evidence to submit that the agreement was in fact entered into, I find that further re-appreciation of this evidence so as to upset the findings of fact cannot be permitted in exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908. Both the Courts have after appreciating the evidence on record concluded that the execution of the agreement had not been proved. The findings recorded are findings of fact and the same cannot be said to be perverse. No substantial question of law arises. Hence, the second appeal is dismissed.

JUDGE

/MULEY/