

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 337 of 2017
[Bhagwat Ramdas Khare & another Vs. Chanda Nankishor Joshi]

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

Court's or Judge's orders

Mrs. S. W. Deshpande, Adv., for the appellants.
Mr. Alok Upasani, Adv., for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : 21st August, 2017

This appeal has been filed by the original defendants who are aggrieved by the decree for specific performance passed by the trial Court and confirmed by the first appellate Court.

The learned counsel for the parties have been heard on the following substantial question of law:-

“Whether the failure to deny the contents of notice dated 9.11.2006 [Exh.32] despite having received the same coupled with the contents of the compromise between the parties [Exh.28], the plaintiff has been rightly held entitled for decree of specific performance?”

It is the case of the respondent-plaintiff that she entered into an agreement for purchase of agricultural land for a consideration of Rs.2,00,000-00. This agreement is dated 22nd November, 2005. As per said agreement, amount of Rs.50,000/- was paid to the

defendants and the sale-deed was to be executed by 11th July, 2006. On 18th June, 2006, as the necessary documents for executing the sale-deed were not ready, the time came to be extended and further amount of Rs.50,000/- came to be paid. Hence, document dated 18th June, 2006 was executed agreeing to have the sale-deed executed by 18th November, 2006. According to the plaintiff, she was ready and willing to perform her part of the agreement; but its execution was avoided by the defendants. Hence the aforesaid suit was filed.

According to the defendants, they had borrowed a sum of Rs.10,000/- from the plaintiff, on the basis of which the plaintiff had obtained their signatures on blank stamp papers. The notice dated 4th November, 2006 issued by the plaintiff was sought to be rebutted by them by issuing another notice dated 9th November, 2006. According to the defendants, there was no reply given to this communication dated 9th November, 2006. It was, therefore, prayed that no decree for specific performance could be passed.

After the parties led evidence, the trial Court accepted the case of the plaintiff and decreed the suit. The appellate Court confirmed said decree.

Smt. S.W. Deshpande, learned counsel for the appellants, submitted that the plaintiff had taken advantage of the signatures obtained on the blank

stamp papers. According to her, an amount of Rs.10,000/- was borrowed from the plaintiff and in lieu thereof, the signatures of the defendants were taken. The notice issued by the plaintiff on 4th November, 2006 was countered by issuing another notice on 9th November, 2006 denying the agreement itself. There was no reply filed to this notice issued by the defendants. Further, the plaintiff was not an agriculturist and, therefore, no decree for specific performance could have been passed in her favour. It was then submitted that the compromise of the revenue proceedings had no bearing on the claim for specific performance, inasmuch as the plaintiff was not a party to those revenue proceedings. It was, therefore, submitted that the decree as passed was not liable to be sustained.

Shri Alok Upasani, learned counsel for the plaintiff, supported the impugned judgments. According to him, the stand that amount of Rs.10,000/- was borrowed was raised by way of afterthought and this stand was never taken in the revenue proceedings. Both the agreements had been duly proved by examining the attesting witness. The plaintiff was always ready and willing to perform her part of the agreement and, therefore, the decree was rightly passed in her favour. The notice dated 9th November, 2006 itself being a reply to the plaintiff's notice, there was no question of again issuing any further reply.

I have heard the learned counsel for the parties at length and perused the evidence on record.

The agreements dated 22nd November, 2005 and 18th June, 2006 have been held to be duly proved by both the Courts. The plaintiff had examined the attesting witness as PW 2 who deposed that the necessary amounts were duly paid to the defendants, after which the agreements were signed. It has been found that the stand that a hand loan of Rs.10,000/- was taken by the defendants was never raised in the revenue proceedings. This fact is admitted in the defendants' cross-examination. Hence, the finding that both the agreements were entered into is based on the evidence on record.

In so far as the letter dated 9th November, 2006 at Exh.32 is concerned, it has been admitted by the defendants in their cross-examination that after receiving the notice dated 4th November, 2006 from the plaintiff, they had replied to the said notice through their counsel. In any event, nothing much would turn on the letter dated 9th November, 2006 as that was the defence raised by the defendants also in the suit for specific performance. It was, therefore, necessary for the defendants to have proved the same. This has, however, not been done.

As regards the submission that the plaintiff was

not an agriculturist, said aspect would not make much difference as the provisions of Section 89 of the Maharashtra Agricultural Lands Act, 1963 can be complied with even after the decree is passed.

I, therefore, find that both the Courts on considering the evidence on record have exercised discretion in favour of the plaintiff. The discretion is in accordance with law. The substantial question of law is, therefore, answered against the appellants. Hence, I do not find any merit in the Second Appeal. Same is, therefore, dismissed. No costs.

Judge

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