

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

SECOND APPEAL NO.389 OF 2017

Nanda w/o Marotrao Barapatre

... Appellant

-VS-

Narendra s/o Sukhdeo Agrawal and ors.

... Respondents.

Shri A. A. Naik, Advocate for appellant.

Shri M. Anilkumar, Advocate for respondent No.1.

CORAM : A.S.CHANDURKAR, J.

DATE : September 01, 2017

P.C.

The appellant is the original defendant who is aggrieved by the decree for specific performance that has been passed by the trial Court and upheld by the first appellate Court.

2. It is the case of the respondent No.1 that on 13/06/2011 he agreed to purchase house property situated at City Survey No.3095/1. The consideration agreed was Rs.8,51,000/-. An earnest amount of Rs.1,01,000/- was paid and the balance consideration was to be paid by 15/10/2011. Notice came to be issued on 20/10/2011 by the plaintiff calling upon the

defendants to execute the sale deed. As there was no response from the defendants, the present suit for specific performance came to be filed. In the written statement the execution of the agreement was denied. It was pleaded that the document was nominal in nature and was executed in lieu of a loan transaction.

3. The trial Court held the agreement to be duly proved and after finding the plaintiff ready and willing to perform his part of agreement, decreed the suit. The appellate Court has confirmed the aforesaid decree.

4. Shri A. Naik, learned counsel for the appellant submitted that the aspect of hardship by granting the decree for specific performance was not considered by both the Courts. It was submitted that the suit property was ancestral in nature and the defendant No.1 was not competent to alienate the same. It was further pleaded that passing of such decree would result in hardship to the defendants and therefore by failing to consider this aspect both the Courts committed an error.

5. The learned counsel for the respondent supported the

impugned judgment. It was submitted that considering the concurrent findings of fact, no interference was called for.

6. I have heard the learned counsel for the parties and I have also perused the impugned judgment. On the aspect of hardship, the trial Court has observed that the defendants had not taken this specific plea in their written statement. The evidence led by them in that regard was without any plea. It was further found that the suit property was purchased by defendant No.1 from the income of her husband. The appellate Court has confirmed this findings.

7. The Honourable Supreme court in ***Prakash Chandra vs. Narayan (2012) 5 SCC 403*** has held that the question of hardship being caused with the defendant within the meaning of Section 20(2)(b) of the Specific Relief Act, 1963 is a question of fact. The same is required to be first pleaded and thereafter proved in the evidence. In the present case it has been found that the defendant No.1 did not raise any plea as to hardship and therefore the Courts have refused to consider that evidence. This adjudication is in accordance with the aforesaid law.

8. In view of aforesaid, I do not find that it was open for the appellants to urge the aspect of hardship in absence of any pleadings.

The Second Appeal is therefore dismissed with no order as to costs.

JUDGE