

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.445 of 2017
[Maroti Raghoba Uikey Vs. Gajanan Govinda Pandhare & others]

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

Court's or Judge's orders

Mr. N. S. Warulkar, Adv., for the appellant.
Mr. N. S. Deshpande, Adv., for respondent nos. 1 to 4.

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CORAM : A. S. CHANDURKAR, J.

DATE : 15th September, 2017

The appellant is the original defendant in the suit for possession filed by the respondents. It is the case of the respondents that they are the owners of Field Gat No. 214/2 admeasuring 1 hectare 22 Are. On 23rd February, 1995, the plaintiff no.1 had borrowed an amount of Rs.6,000/- from the defendant by executing an agreement by way of security. The defendant was put in possession of the suit property on 28th December, 2007. Plaintiff no.1 issued a notice to the defendant seeking possession; but the same was refused. Hence, suit for possession based on title was filed.

The defendant came up with the case that the agreement dated 23rd January, 1995 was for sale of the suit property. Amount of Rs.6,000/- was paid as earnest money. The defendant filed Counter-claim for specific performance. The trial Court dismissed the suit and

decreed the counter-claim by passing a decree for specific performance. The appellate Court reversed that judgment and decreed the suit for possession.

Shri N. S. Warulkar, learned counsel for the appellant, submitted that both the Courts held the agreement dated 23rd January, 1995 to be duly proved and held that it was an Agreement for Sale. The trial Court recorded a finding that the defendant was ready and willing to purchase the suit field. Only on the count that necessary permission of the competent authority was not obtained that the appellate Court held against the defendant. Relying upon the judgment in **Kalandi Baburao Raut & others Vs. Dattu Damu Thakare** [2008 (6) All. M.R. 327], it was submitted that the decree for specific performance could be passed making the same subject to grant of such permission by the competent authority.

Shri N.S. Deshpande, learned counsel for the respondents, submitted that though the defendant was put in possession in the year 1996, he took no steps to have the transaction completed. According to him, only after the suit for possession was filed that the relief of specific performance was sought. He submitted that the appellate Court rightly held that under provisions of Section 36A of the Maharashtra Land Revenue Code, 1966, permission of the competent authority was necessary. There was no evidence to indicate readiness

and willingness on the part of the appellant. He placed reliance on the decision in **Manohar @ Prabhakar Purushottamrao Wakil (dead) through LRs Vanita Manohar Wakil & others Vs. Goma Nagoji Kamble (dead) through LRs Smt. Kamlabai Gomaji Kamble** [2015 (4) Mh.L.J. 643].

The learned counsel have been heard at length.

Both the Courts have held the Agreement dated 23rd January, 1995 to be an Agreement for Sale of the suit property. The sale-deed was to be executed subject to permission being obtained from the competent authority. The defendant was put in possession of the suit property on the date of the agreement. For a period of more than ten years, no steps were taken by the defendant to have the sale-deed executed. The notice as per Exh.33 issued by the plaintiff was also refused. In this backdrop, therefore, the appellate Court rightly held that the defendant could not be treated to be ready and willing to have the transaction completed. Admittedly, there is no evidence led by the defendant in that regard.

In so far as the judgment relied upon by the learned counsel for the appellant is concerned, both the Courts have held that the plaintiffs were ready and willing to perform their part of the agreement. Only on the count that the competent authority had not granted permission was the suit dismissed. In the present case,

it has been found that the defendant was not ready and willing to perform his part of the agreement. Thus, it is not possible to direct specific performance of the agreement. Hence, said decision does not support the case of the appellant.

In the light of the evidence on record, I do not find that the appellate Court committed any error while dismissing the counter-claim. No substantial question of law arises for consideration. Appeal is, therefore, dismissed. No costs.

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Judge

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