

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

Second Appeal No.479 of 2015
(Rajaram s/o Tulshiram Gavai v. Parashram s/o Kanhiram Rathod)

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

Shri N.B. Kalwaghe, Advocate for Appellant.

Coram : R.K. Deshpande, J.
Date : 17th January, 2017

Regular Civil Suit No.92 of 2000 for specific performance of contract was dismissed by the Trial Court on 20-4-2015. The lower Appellate Court has dismissed Regular Civil Appeal No.63 of 2015 on 30-7-2015. Hence, the original plaintiff is before this Court in this second appeal.

The suit for specific performance of contract was based upon the agreement at Exhibit 54 dated 26-4-1999 for a total consideration of Rs.86,000/-, out of which, it is alleged that an amount of Rs.67,000/- was paid by way of earnest money and thereafter an amount of Rs.10,000/- was paid and the balance of Rs.9,000/- was required to be paid at the time of execution of the sale-deed.

The defendant brought on record the earlier agreement

dated 29-5-1998 at Exhibit 107. It is found by the Courts below that the subsequent agreement at Exhibit 54 was in continuation of the earlier agreement at Exhibit 107 and this agreement was not disclosed by the plaintiff. There is nothing on record to show as to why the subsequent agreement at Exhibit 54 was required to be entered into when already the agreement at Exhibit 107 was entered into between the parties. The Courts below have disbelieved and held that the agreement at Exhibit 54 has not been proved.

Shri Kalwaghe, the learned counsel appearing for the appellant, submits that the two applications were made before the Trial Court – one at Exhibit 145 for examination of Talathi, and another at Exhibit 148 for permission to lead additional evidence. Since the agreement itself has not been proved, as has been held by the Courts below, the question of consideration these two applications does not arise.

No substantial question of law arises for consideration. The second appeal is dismissed.

Judge.

Lanjewar