

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

SECOND APPEAL NO.136/2016

Sangita w/o Suresh Reweatkar ..vs.. Dashrath s/o Sitaram Dhote (Dead)
thr. LRs Smt. Parvata wd/o Dashrath Dhote & Ors.

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

Court's or Judge's orders.

Mr. A. S. Deshpande, Advocate for appellant.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 5, 2017

Heard Mr. Deshpande, Advocate for appellant.

The present second appeal is filed by the original plaintiff. Her suit for specific performance on the basis of a contract was partly decreed. The learned trial Court refused to exercise the discretion in her favour. However, at the same time granted the decree for refund of earnest money along with interest at the rate of 8% p.a. from 27.01.2007 till the realization.

The appellant entered into agreement of sale with the respondent on 29.01.2007 by which the respondent agreed to execute the sale deed in respect of the agriculture filed bearing field survey no.310, admeasuring 0.94 HR, situated at Mourza Arsoda, Tq. Armori for consideration of Rs.85,000/- As per the said agreement, the appellant paid Rs.5,000/- towards earnest money and agreed to pay remaining amount of Rs.80,000/- at the time of execution of the sale deed on the agreed date. However, since the respondent failed to execute the sale deed, the suit for

specific performance was filed. The respondent denied the execution of the agreement and acceptance of earnest money. According to the written statement, there was no reason for him to execute the sale deed of the suit property. According to the defendant one Jayant Raut, brother of the appellant got signature of the defendant on the blank stamp paper and the said stamp paper was used as an agreement of sale.

On the rival pleadings, various issues were framed by the learned trial Court. The learned trial Court, on the basis of the available evidence on record, recorded a specific finding that the respondent-defendant has failed to prove that his signature was obtained on blank stamp paper, the learned trial Court also recorded a finding that the appellant was ready to perform his part of contract. Consequently, the suit was partly decreed, however, by granting decree of refund of earnest amount. The appeal carried by the present appellant also received the same fate. Hence, this second appeal.

The learned counsel submitted that in view of explanation-1 of sub Section (b) of Section 20, both the Courts below have committed error in not granting decree for specific performance of contract.

After hearing the learned counsel for the appellant and after having gone through the reasons recorded by both the Courts below in not granting the relief of execution of the same, I am of the view that no substantial question of law emerges in the present second appeal.

It is an admitted position that the land in question is the only land of the respondent. He is aged about 70 years. His livelihood is depending on the agricultural produce. He has a responsibility of a widow daughter. On the contrary, the present appellant is a teacher in the school and her husband is Lecturer and they are not depending on the agriculture land for their livelihood. All these aspects were correctly considered by both the Courts below in refusing to exercise the discretionary relief in favour of the appellant.

In view of above, the appeal is rejected. No order as to costs.

JUDGE

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