

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

SECOND APPEAL NO.322 OF 2017.

SAU. YASHODHARA W/O BHAURAO NAGRARE
VS
SHRI VIJAY S/O DEONATH PATIL

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

Court's or Judge's orders

Shri M. A. Quareshi, Advocate for the appellant.
Shri P. N. Warjekar, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 25, 2017.

The original defendant who is aggrieved by the decree for specific performance passed by the trial Court and affirmed by the appellate Court has filed the present second appeal. According to the plaintiff, on 7-9-2014 an agreement for purchasing eastern half portion of house standing on plot no.117 was entered into. The agreed consideration was Rs.3,70,000/-. The sale deed was to be executed by 15-12-2005. As the sale deed was not executed, the suit came to be filed.

The defendant took the stand that the property was jointly owned by her alongwith her sister. Her sister was a necessary party to the suit and in her absence, the suit itself was not maintainable.

After the parties led evidence, the trial Court held that the agreement was duly proved and that the plaintiff was ready and willing to perform his part of the contract. It was further held

that the agreement was with regard to the defendant's share in the property and accordingly the suit came to be decreed. The appellate Court has confirmed the said decree.

Shri Qureshi, learned Counsel for the defendant by relying upon the averments in the plaint submitted that the suit property was jointly purchased by the defendant and her sister. Referring to averments in para 5 of the plaint, it was submitted that the plaintiff was also aware of this position. Despite this case, the suit was held to be maintainable though sister was not joined as a defendant. According to him, when this position was admitted by the plaintiff, the other evidence was not required to be taken into consideration. He, therefore, submitted that both the Courts committed an error by decreeing the suit.

Shri Warjurkar, learned Counsel for the respondent – plaintiff supported the impugned judgments. According to him, the agreement was with regard to half share of the property standing on plot no.117. The suit house agreed to be purchased was exclusively owned by the defendant and sister's property was a different property. He referred to the evidence on record and submitted that the decree was rightly passed.

Heard the respective Counsel and perused the impugned judgments. As per the agreement between the parties at Exhibit-47, the suit property was described as having been constructed on the plot of land that was jointly purchased by the defendant and her sister. It was then further stated that the agreement was with regard to eastern portion of the house that

had fallen in the share of the defendant and in which her sister had no right. From this agreement, it is clear that the defendant had agreed to sell only that portion of the property in which she had title. The other evidence on record indicates that House No.1915 was separately mutated in the name of the defendant while house no.1915A was mutated in the name of the defendant's sister. The cross-examination of the defendant clarifies this position. The pleadings in para 5 of the plaint cannot be read in isolation. When they are read in entirety, it is clear that the defendant had agreed to sell her share of the property which the plaintiff had agreed to purchase. Considering the averments made in the agreement alongwith the copy of assessment at Exhibit-46, the defendant's sister had no right in house no.1915. Both the Courts rightly held that she was not a necessary party and, therefore, decreed the suit.

In view of aforesaid, the second appeal does not give any rise to any substantial question of law. Same is accordingly dismissed. No costs.

JUDGE

/MULEY/