

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.108 of 2016
[Amar Chahus Mubarak Chahus Vs. Dr. Agakhan Raheman Patel & two others]

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

Court's or Judge's orders

Mr. H. R. Gadhia, Adv., for the appellant.
Mr. S.I. Jagirdar, Adv., for respondent no.3.

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CORAM : A. S. CHANDURKAR, J.

DATE : 11th September, 2017

The appellant is the original plaintiff who is aggrieved by the dismissal of his suit for specific performance of an oral agreement.

It is the case of the appellant that on 5th April, 2005, he entered into an oral agreement with defendant no.2 for purchase of a plot admeausirng 287.7 sq. meters for a consideration of Rs.1,00,000-00. According to him, Rs.25,000/- was paid as earnest amount and the sale-deed was to be executed by 25th September, 2005. On 13th May, 2005, the defendant no.1 executed a sale-deed of the same property in favour of defendant no.3. The plaintiff who claimed to be in possession since 1984 hence filed suit for specific performance of the oral

agreement.

The defendant nos. 1 and 2 denied said oral agreement. They filed a Counter-claim in which it was stated that the suit property was sold in favour of defendant no.3 and he was put in possession. As the plaintiff tried to disturb their possession, the counter-claim for removal of encroachment came to be filed.

The trial Court dismissed the suit as well as the counter-claim. The appellate Court has confirmed this decree.

Shri H. R. Gadhia, learned counsel for the original plaintiff, submitted that the oral agreement dated 5th April, 2005 was duly proved by the plaintiff. His uninterrupted possession since the year 1984 also indicated that he was entitled to be declared as owner by adverse possession. Relying upon the evidence on record, it was submitted that the witnesses examined by the plaintiff had proved the oral agreement. Merely because receipt for the amount of Rs.25,000-00 was not obtained, the plaintiff's case cannot be disbelieved. He placed reliance on the judgment in **Aloka Bose Vs. Parmatma Devi & others** [2009 (4) Mh.L.J. 1] to submit that even an oral agreement could be the subject-matter of suit for specific performance.

Shri S. I. Jagirdar, learned counsel for the

defendants, supported the impugned judgment. He submitted that there was no evidence on record to prove execution of the oral agreement. He referred to the notice dated 20th May, 2005 at Exh.85, in which the plaintiff had stated that the oral agreement in question was entered into more than one-and-half-year ago. He submitted that the title of the suit property was with the defendant no.2 and a valid sale-deed was executed in favour of defendant no.3. He, therefore, submitted that the suit was rightly dismissed by both the Courts.

I have heard the learned counsel for the parties at length.

The case of the plaintiff is that since the year 1984 he was in possession as an encroacher. On 5th April, 2005, an oral agreement was entered into by the defendant nos. 1 and 2 for selling the same to the plaintiff. In that regard, if the evidence is considered, it can be seen that payment of Rs.25,000/- as earnest amount is not supported by any receipt. The document at Exh.85 which is issued by the plaintiff to the Sub-Registrar in May, 2005 stating therein that the sale-deed may not be executed in favour of any other party indicates a statement that this oral agreement was entered into about a year-and-half ago. The plaintiff's own application, thus, casts a doubt on the oral agreement dated 5th April, 2005. Though it is true, as held in *Aloka Bose* [supra] that an oral agreement of

sale is valid, the nature of evidence required for proving the same would be relevant. In the present case, both the Courts have held in clear terms that this evidence is lacking and the plaintiff could not prove execution of the oral agreement. If an amount of Rs.25,000/- was paid, it ought to have been in the presence of witnesses or at least supported by some receipt.

Considering the nature of evidence led by the plaintiff, I find that both the Courts were justified in holding that the plaintiff had failed to prove the oral agreement dated 5th April, 2005. The findings recorded are findings of fact and they do not call for any interference. The appeal does not give rise to any substantial question of law and the same is, therefore, dismissed. No costs.

Judge