

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

SECOND APPEAL NO.77 OF 2017

GANESH S/O SADASHIV NAJARDHANE
VS
BALIRAM DASHRATH UBALE

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

Court's or Judge's orders

Shri S.U. Bhuyar, Advocate for the appellant.

CORAM : A.S. CHANDURKAR, J.
DATED : AUGUST 11, 2017.

The original plaintiff whose suit for specific performance of agreement dated 8-10-2007 has been dismissed has filed the present second appeal.

According to the plaintiff, the defendant had agreed to sell two plots to the plaintiff on 8-10-2007 for a consideration of Rs.56,550/-. Rs.40,000/- were paid on the date of the agreement and the balance amount was paid on 24-3-2009. Though a draft sale deed was got prepared, the defendant did not execute the sale deed. Therefore, suit came to be filed.

On consideration of the evidence led by the plaintiff and his witnesses, both the Courts have held that the plaintiff had failed to prove the agreement dated 8-10-2007. Payment of Rs.40,000/- as an earnest money was also not proved. Though it is the submission of the plaintiff that copy of the agreement was placed on record, the same was not exhibited. The other witnesses examined on behalf of the plaintiff have not led evidence that can

be accepted for holding such transaction to have been completed. Similarly, though the plaintiff stated that the balance consideration was paid to the defendant at his house, he in his cross-examination admitted that he had never been to the defendant's village or his house.

Though it is submitted that the defendant had failed to lead any evidence, I find that the evidence led by the plaintiff himself is not sufficient to grant a decree for specific performance as the agreement of sale itself has not been proved.

Hence, the appeal does not give any rise to any substantial question of law. The same is dismissed. No costs.

JUDGE

/MULEY/