

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

SECOND APPEAL NO.433/2017

Purshottam Ganpat Thote (dead)
through L.Rs.
Smt. Kusumtai Purshottam Thote and ors

...V E R S U S...

Ramdas Sampatrao Babulkar and others

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

Court's or Judge's orders

Shri M.Y.Wadodkar, the learned counsel for the appellant.
Shri Rohit Joshi, the learned counsel for the respondent

CORAM:- V. M. DESHPANDE, J.
DATED :- NOVEMBER 8, 2017

1] Heard Shri Wadodkar the learned counsel for the
appellants and Shri Joshi the learned counsel for the
respondents.

2] The present appeal is directed against the judgment
and decree passed by the learned Civil Judge Senior Division
Nagpur dated 3/5/2014 in Special Civil Suit No. 566/2008 and
the judgment and decree passed by learned District Judge-17
Nagpur dated 29/9/2016 in Regular Civil Appeal No. 267/2014.

3] By the impugned judgment and decree, the learned trial Court decreed the suit filed on behalf of the plaintiff/respondent and granted decree for specific performance of contract. The appeal carried by the appellant/original defendant against said decree for specific performance of contract is dismissed by the learned Lower Appellate Court.

4] The submission on behalf of the learned counsel for the appellant is that agreement in question dated 1/11/2007 (Exh.20) was not intended to be an agreement of sale but, in fact, the transaction as enumerated in the said agreement is a loan transaction. Except this, no other submission was advanced during the course of the hearing before this Court.

5] Execution of agreement to sale (Exh.20) dated 1/11/2007 is not disputed by the defendants. It is to be noted that it bears signature of the defendants as well as the attesting witnesses. The attesting witnesses are the son and son-in-law of the defendant. Further, the defendant was not a rustic person but well educated serving in the government department.

6] The courts below have also noted that in fact, the defendant filed a report against the son that his son and

daughter-in-law were abusing him and restraining various customers visiting for purchasing the property. In my view, both the courts below, therefore, rightly recorded a finding that it corroborates the case of the plaintiff that, the defendant was intending to sale his property.

7] Further, acceptance of the earnest amount by them is also not in dispute. Both the courts below also noted after appreciating the evidence, about financial capacity of the plaintiff. Perusal of the impugned judgment shows that the case of the defendant was properly considered after appreciating available evidence on record.

8] After perusing the impugned judgments and after hearing the learned counsels, it is clear that no substantial question of law is involved in the present second appeal. Consequently, it is dismissed.

JUDGE

RSG