

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

SECOND APPEAL NO.108 OF 2017

NILKANTH SAKHARAM GIRSAVALE
VS
SAU. CHULANBAI @ REKHA W/O GURUDAS GAIKWAD

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

Court's or Judge's orders

Shri D. V. Siras, Advocate for the appellant.
Shri Ritesh R. Dawda, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 28, 2017.

In view of the notice for final disposal issued earlier, the learned Counsel for the parties have been heard at length.

The appellant is the original plaintiff who had filed suit for specific performance of the agreement dated 18-11-1992. By this agreement, land admeasuring 4 Hectares 23R belonging to the defendant was agreed to be purchased for consideration of Rs.40,000/-. Earnest amount of Rs.10,000/- was paid and possession was also handed over to the plaintiff. On 5-6-1994 further amount of Rs.11,000/- was paid by the plaintiff. After issuing notice on 13-4-2005, the suit for specific performance was filed on 23-2-2006.

The suit as filed was opposed. A plea was raised that the plaintiff was not ready and willing to perform his part of the contract. It was pleaded that after handing over possession, the plaintiff did not take any steps to complete the transaction. A

counter claim was also filed seeking possession.

The trial Court held that the plaintiff had failed to prove his readiness and willingness to complete the transaction. It held the plaintiff not entitled for the relief of specific performance. The counter claim for possession came to be allowed. The appellate Court has confirmed this judgment.

Shri D.V. Siras, learned Counsel for the appellant submitted that in accordance with the agreement at Exhibit-47, it was for the defendant to have obtained permission of the Collector for executing the sale deed. The defendant did not take any steps whatsoever and it was clear that the defendant was always ready and willing to perform his part of the agreement. He submitted that on 23-9-1996, the plaintiff had paid stamp duty of Rs.4060/- which indicated that he always wanted to complete the transaction. He referred to the notice issued on 13-4-2005 and submitted that having paid part of the consideration, it was the plaintiff who was interested in completing the transaction. Both the Courts committed an error by holding that the plaintiff was not ready and willing to perform his part of the agreement. He also referred to the deposition of the defendant to indicate absence of any steps being taken by her.

Shri R.R. Dawda, learned Counsel for the respondent – defendant supported the impugned judgments. He submitted that in the agreement at Exhibit-47, it had not been specifically stated that the defendant would obtain the permission. The parties were related to each other and it was for the plaintiff to obtain the

necessary permission. The fact that the plaintiff was pursuing the matter is clear from the document at Exhibit-28 which was the communication issued to the defendant, but received by the plaintiff. He submitted that after the plaintiff was put in possession, he did not take any steps for considerable period and the suit was filed after almost 13 years of the agreement. He, therefore, submitted that no interference was called for in these facts.

I have heard the learned Counsel for the parties at length. Perusal of the agreement at Exhibit-47 indicates that there is only a reference to the aspect of permission being necessary for being obtained from the Collector. There is no clear stipulation as to which party was to obtain such permission. The evidence on record indicates that the plaintiff and the defendant were related to each other and in pursuance of the agreement, the plaintiff was put in possession. It has been found that the plaintiff was pursuing the matter with regard to grant of permission. The communication at Exhibit-28 though addressed to the defendant, its copy was marked to the plaintiff. The deficiencies in the application dated 17-7-1996 have been referred to. The plaintiff in his cross examination admitted that after this communication, he did not inform the defendant about the fate of said application. Till issuance of legal notice in the year 2005 no steps were taken by the plaintiff after receiving communication dated 7-7-1996. This fact itself is sufficient to indicate absence of readiness and willingness on the part of the plaintiff. The plaintiff having been put in

possession, it is obvious that he desired to continue in the same without taking any necessary steps to have the sale deed executed.

I find that the conclusion arrived at by both the Courts is after considering the evidence on record. The appreciation of evidence is not found to be perverse. Hence, the second appeal does not give any rise to substantial question. The same is dismissed. No costs.

At this stage, learned Counsel for the appellant seeks continuation of interim protection for a period of six weeks. This request is opposed by the learned Counsel for the respondent. The decree in question shall not be executed for a period of six weeks from today.

JUDGE

/MULEY/