

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.837 OF 2018

Nizamoddin Samsoddin Pinjari,
Age 55 Yrs. Occ. Service & Agri.
R/o. Shirsoli (P.B.),
Tal. & Dist. Jalgaon.

.. APPELLANT
[Orig.Defendant]

VERSUS

Abdul Kadar Abdul Sattar Kacchi,
Age 55 Yrs., Occ. Service & Agri
R/o. Shirsoli (P.B.),
Tal. & Dist. Jalgaon.

.. RESPONDENT
[Orig.Plaintiff]

...

Mr.A.N.Nagargoje, Advocate for the appellant.
Mr.P.R.Katneshwarkar, Advocate holding for
Mr.N.E.Deshmukh, Advocate for the respondent

...

CORAM : A.M.DHAVAL, J.
DATE : 24.10.2018

ORDER:

1] Heard Mr.A.N.Nagargoje, learned
Advocate for the appellant and
Mr.P.R.Katneshwarkar, learned Advocate
holding for Mr.N.E.Deshmukh, learned Advocate
for the respondent.

2] The appellant is the original defendant. The plaintiff filed Special Civil Suit No.28/2008 against him with a contention that the defendant had agreed to sell to him the suit land, admeasuring 3 Hectar 56 R. from Gat No.33/1, situated at village Ramnagar, Taluka Parola, District Jalgaon, for consideration at the rate of Rs.1,25,000/- per acre. On 14.02.2008, at the time of agreement the earnest money of Rs.4,75,000/- was paid to the original defendant i.e. the appellant and it was agreed to pay remaining amount at the time of execution of sale deed within two months. As the defendant did not respond, the plaintiff served him with notice dated 10th June, 2008. The defendant, by reply, denied the execution of the agreement itself. As per the written statement, the defendant contended that there was oral agreement on 10th March, 2008 and

earnest money of Rs.1 lakh only was paid and his signature was taken on stamp paper bearing No.9237. The time was essence of the contract and sale deed was to be executed within one month and the price agreed was Rs.1,35,000/- per acre. The suit was also contested on the plea that the plaintiff was not an agriculturist and no permission of the Collector was taken. The trial Court on merits accepted the case of the plaintiff and decreed the suit.

3] Mr. P.R.Katneshwarkar, learned Advocate for the respondent submits that thereafter the original plaintiff has deposited remaining amount in the trial Court. The judgment and decree dated 20.08.2011 passed by the Civil Judge Senior Division, Amalner, was challenged before the learned District Judge-1, Amalner by way of filing Regular Civil Appeal No.58/2015. The learned District Judge-1, Amalner dismissed

the said Appeal. Thus there are concurrent findings of the Courts below.

4] Mr.A.N.Nagargoje, learned Advocate for the appellant argued that the substantial question of law is whether the appellant has executed the agreement to sell or not? The Courts below have not considered the following facts:

- i] The signature on the agreement to sell was denied by the defendant.
- ii] The name of the witness is subsequently written and signed. He was examined but he had deposed that the contents of agreement were not reduced in writing in his presence.
- iii] The Courts below did not consider that the time was essence of the contract and that the plaintiff was not agriculturist. The Appellate Court did not record its findings on the issue whether the plaintiff was agriculturist.

5] At the outset it must be mentioned that there are concurrent findings of fact regarding the execution of the agreement to sell in favour of the respondent. The interference in such concurrent findings of fact is permissible only in cases:

i] Where there is perversity of appreciation.

ii] The material admissible evidence is ignored.

iii] Inadmissible evidence has been considered.

iv] Settled principles of law have not been followed.

6] This Court cannot re-appreciate the facts; to arrive at a conclusion contrary to the concurrent finding of both the Courts below unless above discrepancies are noted.

7] As far as agreement to sell is concerned, the appellant has denied his

signature but there is admission that his signature was obtained on some blank stamp paper by the plaintiff. It is difficult to accept that the plaintiff could not have used the blank stamp paper if he wanted to forge the agreement to sell. There is no dispute that there was agreement entered into between the parties for sale of the land. According to the plaintiff, the sale price at the rate of Rs.1,25,000/- per acre was agreed. However, the defendant claimed that price was at Rs.1,35,000/- per acre and after expiry of one month, the sale deed was to be executed. The plaintiff's witness has proved the execution of the agreement, but only admission is that the agreement was ready when he went to sign and thereafter he has signed it. Thereafter, the defendant signed it in his presence but that does not indicate that the very existence of the agreement to sell is doubtful.

8] It is argued that the plaintiff has not shown the payment of Rs.4,75,000/- in his income tax returns. This can be considered while appreciating the facts. It cannot be called glaring infirmity of such nature that the existence of the agreement itself becomes doubtful.

9] The contention that the plaintiff was not agriculturist has no substance. The learned Trial Judge has referred the said issue to the Tenancy Court and Tenancy Court gave finding that the plaintiff was an agriculturist. The said finding was not challenged.

10] The contention that the time was essence of the contract is also not substantiated. Mere mentioning in the agreement that the sale deed would be executed within two months, does not establish that the time was essence of

contract. No circumstances are pleaded and brought on record to show that the defendant was in urgent need of money and execution of the sale deed by receiving the money subsequent to the date agreed would have been of no use to him. Normally, time is not essence of the contract even if the execution of sale deed was fixed within specified period. In the present case, the suit notice was issued within 4 months and the suit is filed immediately thereafter. There is no unreasonable delay. There is no material to substantiate that the time was essence of the contract.

11] As far as denial of the signature of the defendant is concerned, Mr.P.R.Katneshwarkar, learned Advocate has pointed out that the defendant has even denied the signature on page 9 of the written statement and the Courts below have properly considered his untrustworthiness.

12] I, therefore, find that the circumstances referred to above do not raise any substantial question of law. No perversity is shown nor that any settled principle of law are not followed. No inadmissible evidence is shown to be considered or admissible evidence is ignored.

13] At the end, Mr.Nagargoje, learned Advocate argued that the part of the suit land has been acquired by the Government and therefore the issue of the payment of compensation, his entitlement to receive money is in question. Since the entire suit land cannot be sold, there is substantial question of law whether the sale deed can be executed for part of the suit property.

14] In this regard, Mr. Katneshwarkar, learned Advocate has rightly pointed out that there was apprehension of acquisition of land and therefore in the agreement itself it is

stated that if there is land acquisition, the remaining land would be sold and purchased at the rate of Rs.1,25,000/- per acre. The sale was for specific area of 3 Hector 56 R. and there was provision made for deducting any area which would be acquired by the Government out of the said portion. Therefore, the principles under Section 12 [2] and [3] and the conditions for granting partial decree are not required to be invoked in this matter. As far as apportionment of the compensation is concerned, the dispute before the Acquisition Officer will be decided as per the settled principles. This cannot be a ground for admitting the Appeal. Considering the facts, I find that no substantial question of law is involved and therefore the appeal deserves to be dismissed in limine. Accordingly, it is dismissed.

15] Civil Application, if any, stands disposed of.

16] At this stage, learned Advocate Mr.Nagargoje, on instructions, of the appellant present makes a statement that he wants to challenge this judgment before the Apex Court and therefore this order may be stayed for a period of one month. As per the request, the Executing Court is directed not to execute the sale deed for a period of one month from today subject to the condition that the appellant must file appeal before the Apex Court. If such appeal is not filed, then he will have to pay Rs.25,000/- to the respondent.

[A.M.DHAHALE]
JUDGE

DDC