

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

SECOND APPEAL NO.855 OF 2018 WITH
CIVIL APPLICATION NO.13320 OF 2018

Sow. Nalini w/o Ashok Deshmukh

...APPELLANT

VERSUS

Abdul Sayeed s/o Abdul Ajij, Died L.Rs.
Shameem Akhtar w/o Abdul Sayeed
and others

...RESPONDENTS

.....
Shri Milind K. Deshpande, Advocate for appellant
.....

CORAM: A.M. DHAVALÉ, J.

DATED : 29th October, 2018.

ORAL ORDER :

1. Heard Mr. Milind Deshpande, learned counsel for the appellant. The appellant is original defendant. The respondent No.1 (original plaintiff) filed Regular Civil Suit No.927/2001 in the Court of Civil Judge, Senior Division, Aurangabad. He is admittedly owner of the suit property. According to him, he had let out the same to Alice Giri w/o P.S. Benjamin, who illegally inducted the appellant/ defendant in the suit premises. According to the defendant, the plaintiff had orally agreed to sell the suit premises to him for Rs.90,000/- and he had given advance of

Rs.25,000/- as earnest money. The learned Advocate Mr. Deshpande submitted that, the defendant No.1 was still ready to perform her part of the contract and pay the balance amount.

2. Admittedly there is not a single document to ascertain the terms of oral agreement to sell. The payments were also made in cash and not by cheque. There are some witnesses to the said payment. Both the Courts below gave concurrent finding that the agreement to sell itself was not proved.

3. Mr. Deshpande, learned counsel for the appellant tried to impress that there is oral evidence to show that there was in fact oral agreement to sell and there was part payment, but when there are concurrent findings of both the courts below, this Court will be always very slow to interfere. No glaring infirmity/ perversity is brought to my notice. Mere oral evidence about payment of some money cannot prove the agreement. Besides, the alleged oral agreement to sell took place in the year 1997. Since then till today the appellant has not taken any steps for seeking specific performance of the contract. She has not shown that she was always ready and willing to perform her part of contract. There is no document of any sort. In the light of these facts, the appellant is not entitled for protection under the doctrine of part performance of contract. Even if it is assumed

that there was oral agreement to sell, though oral agreement to sell can be specifically performed, the terms must be ascertainable and the self-serving statement of the defendant cannot be accepted as a gospel truth about the terms and conditions. Apart from it, the defendant should have shown readiness and willingness and should have applied for specific performance. She did not even file counter claim for the same. Considering the facts, no perversity is shown. No inadmissible evidence has been considered and no admissible evidence has been ignored. This Court cannot sit for reappreciation of the evidence. As no substantial question of law is involved, the Appeal deserves to be dismissed and is accordingly dismissed in limine.

4. In view of dismissal of the Second Appeal, Civil Application also stands dismissed.

5. Learned Advocate Mr. Deshpande for the appellant submitted that the appellant is ready to pay the price of the suit premises as per the market rate. The appellant is at liberty to negotiate with the respondent, but on this count, the appeal cannot be kept pending.

6. Learned advocate Mr. Deshpande for the appellant submits that the appellant be given time of two months for

vacating the premises. He is ready to show his bonafides by depositing Rs.50,000/- towards mesne profits. Without prejudice to the quantum to be determined by the trial Court about the mesne profits, the appellant is directed to deposit Rs.50,000/- (Rupees fifty thousand) in this Court on or before 2.11.2018 and in case of such deposit, time of two months is granted for vacating the suit premises. The amount of Rs.50,000/-, if deposited, be paid to the respondent No.1-A and 1-B, which shall be adjusted towards the mesne profits which will be determined.

(A.M. DHAVALÉ)
JUDGE

fmp/