

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

914 SECOND APPEAL NO. 702 OF 2017
WITH
CA/13653/2017 IN SA/702/2017

Vasantrao S/o. Dasrao Siraskar
Age : 48 years, Occu: Agri.,
& Business, R/o. Palam,
Tq. Palam, Dist. Parbhani.

.. Appellant
(Orig. Defendant)

Versys

Kisanrao Annasaheb Siraskar
Age : 72 years, Occ: Pensioner,
R/o: Palam, now at present
Sanutri Building No.27,
Defence R. & D. Co.Op. Housing
Society, Alandi Road, Pune,
Tq. & Dist. Pune.

.. Respondent.
(Orig. Plaintiff.)

....

Mr. V.D. Salunke, Advocate for Appellant.
Kisanrao Annasaheb Siraskar – Party in person.

....

CORAM : V.L. ACHLIYA, J.

DATED : 17th OCTOBER, 2018

PER COURT:-

1. Being aggrieved by the concurrent decisions rendered by the courts below, the appellant-defendant has preferred this second appeal.

2. Heard the learned counsel for the appellant-original defendant and respondents-original plaintiff, who appeared in person. Perused the impugned judgment and orders passed by the Courts below.

3. By referring the overall facts of the case, pleadings of the parties, the oral and documentary evidence adduced in the case and the reasons and findings recorded by the Courts below, the learned counsel submits that the Courts below have failed to appreciate the evidence adduced by the defendant in its proper perspective. It is submitted that the respondent-plaintiff has filed suit in gross suppression of material fact as to existence of agreement of sale in respect of suit property between plaintiff and defendant. It is submitted that the Courts below have failed to take into account the oral evidence adduced by the defendant in support of the counter claim seeking decree for specific performance of contract. By referring the pleadings and evidence, the learned counsel submits that the defendant has entered into agreement of sale to purchase the suit property. He has paid Rs.50,000/- to plaintiff as a part consideration towards the agreement of sale entered between plaintiff and defendant. The balance amount of Rs.9,61,000/- agreed to be paid in two installments of Rs.4,50,000/- and Rs.4,61,000/-. The amount of Rs.4,50,000/- was agreed to be paid on 17.10.2004 and the

remaining amount of Rs.4,61,000/- agreed to be paid by the end of December, 2004 at the time of execution of sale deed. On 17.10.2004, the defendant went to Pune to pay the amount of Rs.4,50,000/- to plaintiff. However, the amount could not be paid as plaintiff was out of station. Thereafter, the defendant tried to contact the plaintiff to pay the amount. However, plaintiff avoided to accept the amount and lodged a false police complaint against the defendant. In this background, the learned counsel submits that in view of the oral evidence adduced by the defendant in support of his case, the trial Court ought to have decreed the suit. The trial Court has refused to rely upon the oral evidence adduced by the defendant. In this background, the learned counsel submits that the trial Court has erred in ignoring the oral evidence adduced by the defendant.

4. Learned counsel submits that though there are concurrent decisions recorded by Courts below, still the appeal raises substantial questions of law. It is submitted that ground nos. III, V, VI, VIII and IX raised in memo of appeal raises substantial questions of law. By referring the decision in the case of ***Ishwar Dass Jain Vs. Sohanlal*** reported in **2000 (1) SCC** page **434**, learned counsel submits that though there are concurrent decisions on facts recorded by the Courts below, still the second filed by the appellant deserves to be admitted. It is submitted

that the courts below have overlooked the evidence adduced by defendant. In this background, the learned counsel urged to admit the appeal.

5. On the other hand, the respondent-original plaintiff, who appeared in person opposed the admission of appeal with contention that the appeal filed by the appellant is devoid of merit and substance therein and raises no substantial question of law to be considered in second appeal. He submits that the courts below have duly appreciated the rival pleadings as well as oral and documentary evidence adduced in the case while deciding the suit as well as appeal. By referring the overall facts of the case and evidence on record, the respondent submits that undisputedly the respondent is the owner of the premises. There is no evidence to show that the possession of the premises was handed over to defendant as claimed by defendant. It is submitted that there was an oral agreement to purchase the suit land for consideration of Rs.9,61,000/-. No written agreement other than chit i.e. exhibit 46 issued by plaintiff, which confines to receipt of payment of Rs.50,000/- paid as an advance and further specify that the balance amount to be paid in two installments of Rs.4,50,000/- and Rs.4,61,000/- as per the time schedule mentioned in the chit (exhibit 46). It is submitted that the oral agreement to sell of the suit property had taken place on

27.09.2004. The defendant had paid Rs.50,000/- to him as an earnest money. He has agreed to pay Rs.4,50,000/- on or before 17.10.2004 and balance amount of Rs.4,61,000/- by the end of December, 2004. It is submitted that the defendant has not discharged his obligation to pay the balance amount of Rs.4,50,000/- on or before 17.10.2004 as well as Rs.4,61,000/- by the end of December, 2004 and there by committed the breach of oral agreement, which leads to forfeiture of earnest money of Rs.50,000/- paid to plaintiff.

6. It is submitted that the defendant acting with an dishonest intention and joining hands with the official of the village panchayat, got mutated his name in respect of suit property in the record of village panchayat without notice to appellant and further illegally entered upon the suit plot. In these circumstances, the plaintiff was constrained to file suit for injunction. Later on, he claimed the decree for possession against the defendant as defendant has illegally entered over the suit plot, erected illegal structures and let out the same to various person. In this background, the respondent submits that the trial court has duly considered the oral and documentary evidence and held that plaintiff is entitled for the decree of possession and dismissed the counter claim of defendant.

7. I have carefully considered the submissions advanced in the light of rival pleadings, the evidence adduced and the reasons and findings recorded by the Courts below. It is an admitted position that there was no written agreement of sale entered between plaintiff and defendant. It is also not in dispute that there was an oral agreement between plaintiff and defendant to sale the suit plot for total consideration of Rs.9,61,000/-. So also, there is not dispute as to the fact that except the chit Exhibit 46, there is no document executed providing the terms of agreement settled between the parties. There is no dispute that except Rs.50,000/- paid on 27.09.2004, no amount towards sale consideration paid to plaintiff till filing the suit against the defendant. So also, not a single notice issued by defendant to plaintiff to execute the sale deed by accepting the amount of Rs.9,61,000/-. So also, there is no documentary evidence to show that the possession of the suit plot was handed over by plaintiff to defendant on 27.09.2004 or thereafter. Without any sale deed executed in favour of defendant, the defendant got mutated his name in the record of village panchayat. He has entered upon the suit plot and erected structures and let out the same to various person. It is an admitted position that the suit plot owned by plaintiff.

8. If we consider the overall evidence adduced in the case, then beside examining himself, the plaintiff has examined two witnesses in support of his case. The defendant also examined three witnesses. On due consideration of evidence adduced in the case, the trial Court has decreed the suit filed by the plaintiff and dismissed the counter claim of the defendant. In appeal, the appellate Court confirmed the judgment and order passed by the trial Court. I have examined the reasons and findings recorded by the Courts below. In my view, that the reasons and findings recorded by the Courts below are quite consistent with the rival pleadings, oral and documentary evidence adduced in the case. It is an admitted position that except the oral say of the defendant, there is no evidence to show that the defendant was put in possession of the suit plot. Similarly, there is no dispute as to the fact that defendant has not paid amount of sale consideration to plaintiff. No document of title exists in favour of defendant to claim right, title and interest over the suit property. In that view, the reasons and findings recorded by the trial Court and confirmed in appeal cannot be termed as perverse.

9. The conduct of the defendant itself sufficient to disbelieve the case of defendant that defendant was always ready and willing to perform his part of contract. Not a single notice was issued by defendant to plaintiff to call upon him to execute the

sale deed by accepting the amount of sale consideration in terms of oral agreement. On the contrary, the conduct of the defendant to get his name mutated behind the back of plaintiff and illegally erect the structures over the suit plot sufficient to draw inference that the defendant intended to grab the property of plaintiff without paying the sale consideration. Since the possession of defendant found to be illegal, the trial Court has rightly decreed the suit and dismissed the counter claim of defendant. Thus, there is absolutely no perversity in the judgment and orders passed by the Courts below to entertain the second appeal filed by the appellant.

10. I have no hesitation to observe that the concurrent findings recorded by Courts below are quite consistent with the pleadings and evidence adduced in the case. There is absolutely no perversity in recording the reasons and findings by the Courts below. The evidence as adduced by the defendant was duly considered by the Courts below. The appeal raises no substantial questions of law. In absence of any substantial question of law being involved in the appeal, the appeal deserves to be dismissed. In the result, the appeal is dismissed with no order as to costs.

11. In view of dismissal of appeal, Civil Application No.13653/2017 also stands disposed of.

(V.L. ACHLIYA)
JUDGE

Sudhir Rane