

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.10893 OF 2018

Kasim Abdulgni Mahaldar	 Appellant
V/s.	
Shadab Mahamad Ismail Ansari & Ors.	 Respondents

Mr. B.G. Tangsali for the Appellant.

Mr. A.J. Rizvi, I/by Mr. M.B. Joshi, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 6TH AUGUST, 2018.

P.C. :

1. Heard Mr. Tangsali, learned counsel for the Appellant, and Mr. Rizvi, learned counsel for Respondent No.5.

2. This Second Appeal is preferred against the concurrent Judgment of the Trial Court and the first Appellate Court, by which the Suit for specific performance filed by the Appellant came to be dismissed on the count that the Appellant has failed to prove his readiness and willingness to perform his part of the contract. The evidence on record goes to prove that, though the 'Agreement to Sell' is dated 8th October 1992, the Suit is filed in the year 2011. During all this period, Appellant has not made single enquiry with the Vendor i.e. Mahamad Ansari and

Abida Ansari as to whether they had obtained non-agriculture permission. Even though the Appellant was knowing that, Mahamad Ansari and Abida Ansari had died within the gap of 25 to 30 days in December 2003, he has not made enquiry about non-agriculture permission or asked for execution of the 'Sale-Deed' from their legal heirs i.e. Respondent Nos.1 to 4 herein.

3. Moreover, there is also concurrent finding that, the amount of Rs.50,000/- towards the consideration was not paid by the Appellant to the Respondents. In such situation, in the light of the proper appreciation of evidence on record, no interference is warranted in the impugned 'Judgment and Order' of the Trial Court and the first Appellate Court, by which the refund of the amount of Rs.1,00,000/-, which the Appellant has paid towards execution of the 'Agreement to Sell' is granted by both the Courts below @ 15% p.a. from the date of the 'Agreement to Sell', i.e. 8th October 1992, till realization of the amount.

4. In the Second Appeal, therefore, no case is made out for grant of specific relief, that too, after the lapse of more than 26 years. Hence, the Second Appeal stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]