

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 256 OF 2016
WITH
CIVIL APPLICATION NO. 472 OF 2016
IN
SECOND APPEAL NO. 256 OF 2016

Shri Shivaji Maruti Shelar

...Appellant

Versus

Laxman Balwant Sawant
(Deceased) through legal heirs
Bajrang Laxman Sawant
(Deceased) through legal heirs
Smt. Kamal Bajrang Sawant & Ors.

...Respondents

.....

Mr.R.D.Suryawanshi for the Appellant..
Mr.S.T.Bhosale I/b. Mr. Dilip Bodake for Respondent Nos. 1A2, 1B to 1F.

.....

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 26, 2018**

P.C.:

1. This Second Appeal is directed against the judgment and order dated 7th September, 2015 passed by the learned District Judge -2, Satara in Regular Civil Appeal No.489 of 2012 arising out of the judgment and decree dated 8th November, 2012 passed by the

learned 2nd Joint Civil Judge, Junior Division, Wai in Regular Civil Suit No.20 of 2012.

2. At the time of hearing, it is found that there is substantial question of law. The learned Judge of the Appellate Court has passed the following order:

ORDER

“1] Appeal is allowed.

2] The order of the Ld. Trial Court dismissing the suit is set aside and the suit is instead decreed.

3] The order of the Ld. Trial Court of refund of the earnest amount is confirmed.

4] Decree be drawn accordingly”.

3. This is a suit for specific performance of the contract in respect of the amount where an amount of Rs. 25,000/- was paid by the original plaintiff/ vendor i.e. appellant to the respondents/ defendants. The learned Judge of the trial Court dismissed the Suit and directed the respondents i.e., defendants to return the amount of Rs.25,000/- along with interest @6% p.a. from 19th November, 1998 i.e., the date of the agreement to the plaintiff. After going through the issues, findings given on the issues by the Appellate Court and the operative

order passed in paragraph nos. 1 to 4 so also finding given in paragraph no. 20, it appears contradictory and confusing. Hence, the matter is remanded back to the Appellate Court and it is to be heard afresh within a period of five months from today.

4. With this, Second Appeal is disposed of as remanded. Civil Application does not survive and the same is also accordingly disposed of.

(MRIDULA BHATKAR, J.)