

SECOND APPEAL NO. 404 OF 2018
WITH
CIVIL APPLICATION NO. 802 OF 2018

Dr.Deepak Prabhakar Vikhare	...	Appellant
V/s.		
Shankar Sakharam Mirlekar & Ors.	...	Respondents

- Mr.Harish R. Pawar for the Appellant.
- Ms.Madhu Hiraskar i/b. V & M Legal for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned
counsel for the Respondents.

2] This Second Appeal is directed against the concurrent judgment and order of the trial Court and the Appellate Court, thereby decreeing the Respondent's suit for specific performance of the agreement, which was part of the 'consent decree' dated 26/04/2001 passed in Regular Civil Suit No.35 of 1990.

3] Only two submissions are advanced by learned counsel for the Appellant. First submission is that the suit suffers from multifarious causes of action, as in the same suit the Respondents have claimed the specific performance of the 'Agreement of Sale' and also execution of 'Lease', as regards two different portions of the property. However, in my considered opinion, both the Courts below have rightly held that, as the specific performance is sought in respect of the one and same agreement, which was part of the consent decree dated 26/04/2001, it cannot be said that the suit in any way suffers from multifarious causes of action.

4] The second submission advanced is that, both the Courts below have wrongly held that the Respondents have succeeded in proving their readiness and willingness to perform their part of contract. In this respect, reliance is placed on the finding arrived at by the trial Court that there was no evidence to show that the Respondent's father had paid the amount of Rs.11,000/- to the Appellant. However, in this respect also, in the considered opinion of this Court, both the Courts have rightly held that there is clear averment in the plaint and also in evidence before the Court it is categorically deposed by the Respondent that the Respondent and his father were always ready and willing to perform their part of the

contract. The trial Court has also found that the construction costs were already paid. Only for want of sufficient proof as to the payment of Rs.11,000/- by the father of the Respondent to the Appellant, it was held that the Respondents is liable to pay the same amount again. Except for that, there is nothing in the judgment of the trial Court or the Appellate Court to hold that the Respondents have failed to prove their readiness and willingness to perform their part of contract. As a matter of fact, the Appellant has not even entered into witness box to controvert the specific case put up by the Respondents that Respondent and his father were all along ready and willing to perform their part of the contract.

5] In the Second Appeal therefore, no substantial question of law having been raised, it stands dismissed.

6] In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and therefore, it stands disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]