

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

***SECOND APPEAL NO. 310 OF 2014
Along with
CIVIL APPLICATION NO. 768 OF 2014.***

Mr.Ajay Krishna Wankhede .. Appellant
Vs
Mr.Shivram Mahadeo Gole
Deceased through his legal heirs
1(a). Shri Chintamani Shivram Gole
and others .. Respondents

Mr.Ajay S. Patil, for the Appellant.

***Coram : N.M.Jamdar, J.
Date : 29 January 2018.***

Oral Order :

Heard learned counsel for the Appellant.

2. The Appellant-Plaintiff filed a suit seeking specific performance of an alleged agreement dated 8 December 1984. Both, the learned Civil Judge and the learned District Judge, Ulhasnagar did not accept the case of the Appellant that Appellant is entitled to the specific performance on the ground that the agreement itself was

not proved.

3. The so-called agreement is executed on mere stamp paper. Since the Appellant was seeking specific performance of this document it was incumbent upon the Appellant to prove the document. The Appellant did not examine the executor nor attesting witness and the document is not signed by the Appellant. The learned District Judge rightly concluded that merely on the basis of a receipt, existence of agreement cannot be inferred. Since the agreement itself was not proved, there was no question of deciding the factor of readiness and willingness. In these circumstances, no question of law arises. The Second Appeal is accordingly dismissed. Civil Application stands disposed of.

(N.M.Jamdar, J.)