

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

**SECOND APPEAL NO. 551 OF 2017
WITH
CIVIL APPLICATION NO. 1033 OF 2017**

Sandeep Nanoso Sabale ... Appellant
V/s.
Sarjerao Baburao Sabale & Ors. ... Respondents

- Mr.Gautam T. Kanchanpurkar for the Appellant.
- Mr.Nikhil Wadikar i/b. Mr.Nandu Pawar for Respondent Nos.1 to 4.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 2nd 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 judgment and decree dated 06/12/2016 passed by the Adhoc District Judge-2, Satara, thereby dismissing Regular Civil Appeal No.138 of 2013, which was preferred against the judgment and decree passed by the 8th Joint Civil Judge, Junior Division, Satara, in Regular Civil Suit No.268 of 2008 on 04/03/2013.

3] Appellant herein is the original Defendant No.2. Respondent Nos.1 to 4 had filed the suit against the Appellant and Respondent Nos.5 and 6 herein for '*specific performance of the agreement*' dated 04/11/1988 executed by the original Defendant No.1 in favour of father of Plaintiff Nos.1 to 4 and Defendant No.3. As per the case of the Respondents, on the date of agreement itself, the amount of Rs.5,000/- was paid out of the total consideration of Rs.5,500/-. As the land was of restricted tenure, the permission of the Collector was necessary for execution of the sale-deed. On getting such permission, the sale-deed was to be executed within a period of six months. However, the Appellant avoided to get the permission and after getting the permission within two days he executed the sale-deed in respect of suit property in favour of Defendant No.2. Hence, the Respondent Nos.1 to 4, were constrained to file this suit for specific performance of contract.

4] Both the trial Court and the Appellate Court had held that the Respondent Nos.1 to 4 have succeeded in proving execution of the agreement, their readiness and willingness to perform their part of contract and accordingly, decreed the suit.

5] In the Second Appeal, the only issue raised for consideration by learned counsel for the Appellant is, as to, whether both the Courts below have committed an error in holding as proved the readiness and willingness on the part of deceased Baburao and after his death on the part of Plaintiffs in getting the sale-deed of the suit property executed in their favour.

6] In this respect, it has to be stated that there is concurrent finding of fact and the said finding of fact is based on the pleadings and also the evidence on record. As pointed out by learned counsel for the Respondents and as held by both the Courts below, in written statement the Original Defendant No.1 has categorically admitted the contents of para No.4 and 6 of the plaint to be true and correct. In those paragraphs it is stated that Respondent Nos.1 to 4's father and thereafter the Respondents were always willing to perform their part of agreement. Therefore, whatever is admitted in the pleadings, need not be proved, in view of Section 58 of the Indian Evidence Act.

7] Secondly, the only part that remained to be performed on the part of the Respondents was of payment of balance amount of Rs.500/- and that payment was to be paid after the requisite permission from the Collector was to be obtained by the vendor. It is pertinent to note that within two days after obtaining the requisite

permission, the vendor has sold out the suit land to Appellnt. Therefore, the conduct of the vendor-Defendant No.1 is not at all bonafide. Even conduct of Appellant was also not bonafide, as he has admitted that he was knowing about the previous agreement of sale executed in favour of the Respondent's father.

8] The only contention raised by learned counsel for the Appellant is that, though the father of the Respondents was very much alive for a period of 10 years after execution of the agreement, he has never approached the Defendant No.1 for execution of the sale-deed and not even made enquiry about the permission. This contention also cannot be accepted as it was for Defendant No.1 to obtain such permission and inform the Respondent's father about the same. He has not obtained such permission. Hence, there was no question of the Respondent's father approaching Defendant No.1 for execution of the sale-deed.

9] As regards the alleged admission given by Defendant No.1 in cross-examination, considering that in the written statement, he has categorically admitted the readiness and willingness on the part of the Respondent Nos.1 to 4 to perform their part of the contract, such stray admission which travels beyond the pleading, cannot be given any weightage.

10] The reliance placed by learned counsel for the Appellant in this respect on the judgment of this Court in the case of *Siddhivinayak Audyogik Vasahat Maryadit, Ozar (MIG) V/s. Murlidhar Vedu Jadhav & Ors.*, [2017(3) Mah.L.J.326], is also not of any help. It is submitted that the Plaintiff has to prove the continuous readiness and willingness to perform his part under the agreement. Here, in the written statement, Defendant No.1 himself has admitted the readiness and willingness on the part of the Respondents to perform their part of the agreement.

11] In such situation, no substantial question of law is raised in this Second Appeal. Therefore, Second Appeal stands dismissed.

12] 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.]