

Sequeira

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

***SECOND APPEAL NO. 634 OF 2016
Along with
CIVIL APPLICATION NO. 716 OF 2017***

Ms.Pushpa Dharma Nalavade

.. Appellant

Vs

Ms.Sangita Nitin Pawar

.. Respondent

Mr.Surel S. Shah, for the Appellant.

Mr.V.S.Talkute, for the Respondent.

Coram : N.M.Jamdar, J.

Date : 22 January 2018.

Oral Order :

By this appeal, the Appellant-Defendant has challenged orders passed by the learned Civil Judge, Satara and learned District Judge Satara, decreeing the suit filed by the Respondent-Plaintiff and dismissing the appeal filed by the Appellant. Special Civil Suit No.136 of 2008 filed by the Respondent-Plaintiff for specific performance of agreement dated 12 December 2007 was decreed by the learned Civil Judge, and the appeal filed by the Respondent was dismissed.

2. The learned counsel for the Appellant firstly submitted that the Respondent-Plaintiff has not stepped in the witness box and has

examined Power of Attorney which is not permissible, as she must depose personally that she was ready and willing to perform her part of contract. Before this argument is considered what was the defence of the Appellant also has to be noted. Specific contention was raised by the Appellant that a fraud was committed by the Respondent in respect of execution of the agreement. The Appellant did not step into the witness box and examined a power of attorney. The Appellant also did not examine herself, which is necessary if the allegation of fraud has to be proved. The grant of specific performance is within the realm of equity jurisdiction of the court and before the argument of the Appellant that the Respondent did not step in the witness box, the conduct of the Appellant herself of not stepping in the witness box will have to be considered. Independent of this position, both the Courts have concurrently found that there was material on record to come to the conclusion that the Respondent was ready and willing to perform her part of contract. Nothing is shown as to how this finding is perverse.

3. The learned counsel for the Appellant then submitted that the Court was under mandate to consider the equities in view of section 20 of the Specific Relief Act, 1963 which both the Courts have not considered. He submitted that the Appellant is a widow and the suit property is the only land available to her. The learned counsel for the Respondent submitted that this point was not urged in the appeal.

4. I have gone through the evidence of the Power of attorney

examined by the Appellant. It is stated that the husband of the Appellant expired in the year 1990. In his place the Appellant was appointed on compassionate basis in the Thane Municipal Corporation and is working there. Agreement is of the year 2007. Thus it is not that the appellant is a hapless widow, as sought to be contended for the first time in this court. On this ground, the relief of specific performance granted to the Respondent by both the Courts cannot be taken away.

5. No substantial question of law arises. Second appeal is accordingly dismissed. Civil application stands disposed of. If the Respondent is proceeding to execute the sale deed and for delivery of possession, she shall not do so without giving six weeks advance notice to the Appellant.

(N.M.Jamdar, J.)