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

**SECOND APPEAL NO.939 OF 2015  
WITH  
CIVIL APPLICATION NO.2026 OF 2015**

Shashikala Baburao Shinde ... Appellant.  
V/s.  
Bebitai Balgonda Patil and anr ... Respondents  
Mr. Mohan N. Dhamal, for the appellant.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 31<sup>st</sup> JULY, 2018.**

**P.C. :**

- 1] Heard learned counsel for the appellant.
- 2] This Second Appeal is preferred against the concurrent finding of fact recorded by the Court of Joint Civil Judge Junior Division, Kolhapur, in R.C.S.No.1772 of 2000, vide judgment and order dated 3<sup>rd</sup> December, 2009 which was confirmed by the Court of the Principal District Judge, Kolhapur, in his judgment and order dated 15.4.2015 in Regular Civil Appeal No.55 of 2010.
- 3] The appellant is the original plaintiff, who has filed the present suit for specific performance of the agreement dated 8.01.1991.
- 4] As per said agreement, sale deed was to be executed after

five years from the date of execution of the agreement. It is contended that immediately thereafter, deceased Bapu, the father of respondent No.1 had mortgaged the suit land by way of conditional sale- in favour of respondent No.2 by executing the deed to that effect on 6.7.1991 and delivered him possession of the suit land. Bapu died on 10<sup>th</sup> December, 1994. Thereafter the appellant had filed this suit for specific performance of the agreement after issuing notice to respondent No.1 on 29.4.1997, calling upon him to redeem the mortgage and execute the sale deed which requisition, respondent No.1 has failed to comply.

5] The suit came to be resisted by respondent No.1 denying the execution of the alleged agreement of sale dated 8<sup>th</sup> January, 1991. However, it was conceded that the deceased Bapu had mortgaged the suit land in favour of respondent No.2 by executing registered mortgage deed dated 6<sup>th</sup> July, 1991 and since then respondent No.2 is in possession and cultivation of the suit land. It was submitted that respondent No.1 had already instituted a suit bearing R.C.S.No.887 of 1996 for redemption of mortgage against respondent No.2. The said suit came to be decreed and the appeal preferred by respondent No.2 against the same bearing R.C.A No.327 of 199 was also dismissed on 23.6.1999.

6] In view of these facts on record, both the Courts were

pleased to hold that the appellant has failed to prove the execution of the agreement by deceased Bapu and further failed to prove that she is entitled for specific performance of the contract by proving her readiness and willing to perform her part of the contract.

7] In this Appeal, the submission of learned counsel for the appellant is that both the Courts have committed an error in appreciating the evidence on record and holding that the agreement of sale is not proved. It is urged that reliance was placed on the opinion of Hand-Writing Expert, by the Courts below though the Hand Writing Expert was not examined. According to learned counsel for appellant, therefore, there is substantial question of law raised in this appeal.

8] However, the perusal of the judgments of both the Courts below, reveals that during the life time of Bapu, the appellant has not claimed specific performance of the agreement. The execution of the said agreement is not proved by the appellant as she has categorically expressed her inability to state from where the agreement was got scribed, who had scribed it, in whose name the stamp paper was purchased and on which dates part payment was made. She has also admitted that she has no independent source of income to pay the earnest money. There was also no reason for Bapu to execute deed of mortgage by conditional sale with respondent No.2, within few

months, who is son of respondent No.1 and residing with her.

9] Appellate Court has also considered the fact that though the agreement of sale was sent to Hand Writing Expert, he is not examined by respondent No.1, making it necessary to draw adverse inference. Moreover, the trial Court has in exercise of its power under Section 73 of the Evidence Act, noticed the stark dissimilarity between the admitted signature of Bapu and his signature on the agreement to sale.

10] Thus, on proper appreciation of evidence on record, both the Courts have concurrently held that the appellant has failed to prove the execution of the agreement. Therefore, there is no substantial question of law, as such, raised in this appeal. The appeal, therefore, stands dismissed, being devoid of merit.

11] In view of dismissal of the appeal, Civil Application No.2026 of 2015, becomes infructuous and the same is disposed off accordingly.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**