

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

**SECOND APPEAL NO. 735 OF 2014
WITH
CIVIL APPLICATION NO. 1714 OF 2014**

Ranjanabai Madhukar Ahire & Anr. ... Appellants
V/s.
Arun Devidas Suryawanshi & Anr. ... Respondents

- Mr.Shrikrishna R. Ganbavale for the Appellants.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th JUNE, 2018.

P.C. :

1] Heard learned counsel for the Appellants.

2] This appeal is preferred against the judgment and decree dated 1st August, 2014 passed by Adhoc District Judge-1, Malegaon, thereby dismissing Regular Civil Appeal No.28 of 2011, which was preferred against the judgment and decree dated 14th March, 2011 passed by the Civil Judge, Senior Division, Malegaon, in Special Civil Suit No.62 of 2006.

3] The said suit was preferred by Respondent No.1-Plaintiff against the present Respondent No.2-defendant No.1 and the present Appellants, who were arranged as Defendant Nos.2 and 3 respectively. The suit was filed for Specific Performance of the Contract on the basis

of the 'Agreement of Sale' executed on 13th December 2002. As per the case of the plaintiff, on the date of Agreement itself, the amount of Rs.20,000/- was paid towards the earnest money. Thereafter, Defendant No.1 has accepted the amount of Rs.30,000/- towards the marriage expenses of his daughter. Thus, totally the amount of Rs.50,000/- was received by Defendant No.1 out of total consideration of Rs.1,63,280/-. Thereafter, despite the notice issued by the Plaintiff on 8th March, 2006 calling upon Defendant No.1 to execute the sale-deed, defendant No.1 avoided to do so. Instead thereof he executed the sale-deed of the suit property in favour of defendant Nos.2 and 3, namely, the present Appellants, on 22nd May, 2006. Hence, the plaintiff was constrained to file the suit for specific performance of the contract.

4] Both the trial Court and the Appellate Court have, after considering the evidence on record, held that the execution of the agreement is proved and the readiness and willingness on the part of the plaintiff to perform his part of the contract is also proved on record. Hence, it was held that the plaintiff is entitled to get the specific performance. As regards the sale-deed executed by defendant No.1 in favour of defendant Nos.2 and 3; it was held that the said sale-deed was executed after the notice was received from the plaintiff and hence, it cannot be said that it is a transaction executed bonafide, in

good faith or after reasonable enquiry on the part of the defendant Nos.2 and 3.

5] This concurrent finding of the fact, arrived at by the trial Court and confirmed by the Appellate Court, is challenged in this Second Appeal by learned counsel for the Appellant, by pointing out to the evidence of power of attorney of the plaintiff, who has admitted in his evidence that he was not present at the time of the agreement and he has no personal knowledge about the same. Therefore, it is urged that on the basis of the said evidence, the trial Court should not have granted the specific performance of the contract.

6] However, in this respect, the plaintiff has also examined the attesting witness to the said 'Agreement of Sale' who has categorically deposed about the negotiations between the parties and also the execution of the agreement for sale in his presence and the payment of consideration amount of Rs.20,000/- by the plaintiff to defendant No.1 in his presence. He has further deposed about the payment of Rs.30,000/- by the plaintiff to defendant No.1 on 22nd May, 2006 towards the marriage expenses of his daughter. Most importantly, defendant No.1 has admitted in his cross-examination, the execution of the agreement for sale, receipt of consideration amount and even the receipt of demanding of the notice issued by the

plaintiff calling upon him to execute the sale-deed.

7] In view thereof, both the trial Court and the Appellate Court have rightly held that not only the execution of the agreement is proved but also the readiness and willingness on the part of the plaintiff to perform his part of the contract is also proved on record being not disputed.

8] It is a matter of record that defendant No.1 has not replied the suit notice. Conversely, after the receipt of the said notice, he has executed the sale-deed of the suit land in favour of defendant Nos.2 and 3. Hence, it was necessary for defendant Nos.2 and 3 to prove that they are bonafide purchasers of the suit land and had entered into transaction after making reasonable and proper enquiry which is expected from any prudent man.

9] In the instant case, defendant Nos.2 and 3 have not entered into witness box in order to prove that they have entered into transaction in good faith. Hence, merely because their sale-deed is registered, it will not prevail over the 'Agreement of Sale' which is the transaction prior in time and which is properly proved on record.

10] Both the trial Court and the Appellate Court have therefore rightly held the plaintiff entitled for specific performance of the

contract. In the Second Appeal, no question of law is involved or raised.

11] Hence, the Second Appeal stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]