

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER No. 747 OF 2014
WITH
CIVIL APPLICATION No. 909 OF 2014 IN A.O. No. 747 OF 2014**

Multanchand Tatanchand Meher ... Appellant/Applicant
Vs.
Sharad Chandra Barate & Anr. ... Respondents

Ms. Manjiri S.Parasnis, Advocate for the appellant/applicant.
Mr. Abhijit P. Kulkarni, Advocate for respondent nos. 1 and 2.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 15th January, 2018.

P.C.:

This Appeal from Order is directed against the order dated 8th October, 2013 passed by the learned Civil Judge Senior Division, Baramati thereby rejecting the Application Exhibit 5 which was filed under Order 39 Rules 1 and 2 of Code of Civil Procedure in Special Civil Suit No. 72 of 2013.

2. The appellant is an original plaintiff, who has filed the suit for specific performance based on oral agreement dated 28th January, 2011 in respect of sale of land. The respondent/defendant No. 1 is the owner of the land. It is the case of the appellant/plaintiff that respondent no. 2/defendant No. 2 has acted as an agent of respondent/defendant No. 1 and pursuant to the said agreement, the

appellant/plaintiff has paid Rs.40,00,000/- by cheque to respondent No. 2. However, respondent no.1 did not come forward to execute the Agreement in respect of the land and avoided to perform his obligation and, therefore, the appellant filed the suit for specific performance. The respondent nos. 1 and 2 appeared and filed written submission and say and opposed the application. Respondent No. 1 denied existence of any such agreement with the appellant/plaintiff so also denied the receipt of any such amount. The trial Court rejected the Application. Hence, this Appeal.

3. The learned counsel for the appellant has submitted that the suit is based on oral contract. The appellant/plaintiff has initially paid an amount of Rs.50,00,000/- by cheque in the name of respondent No. 1, however, respondent No. 1 did not encash the said cheque and, therefore, the appellant/plaintiff paid total amount of Rs.40,00,000/- by various cheques in the name of respondent No. 2. Till today, the total amount of Rs.40,00,000/- were paid by cheques and some amount was paid in cash towards the consideration of suit plot. She submitted that the appellant/plaintiff gave public notice to which respondent No. 1 did not appear and did not take objection. Respondent No. 2 was working as agent of respondent No. 1. Under such circumstances, the order passed by the trial Judge be set aside.

4. The learned counsel for respondent nos. 1 and 2 submitted that respondent No. 1 has not entered into any transaction or Agreement with the appellant/plaintiff. He is the owner of the land. He has no connection in respect of said sale or transaction with respondent No. 2. The learned counsel submitted that respondent No. 2 did not act as agent of respondent No. 1. Under such circumstances, the Appeal from Order be dismissed.

5. Heard the submissions. Perused the order of the trial Court. As it is based on the oral contract, prima facie there is nothing to show on record that there was some transaction or agreement between the appellant and respondent No. 1/owner of the land. Under such circumstances, the finding given by the trial Court cannot be faulted with. I am informed that the trial Court has framed the issues and evidence is already started. In view of this, Appeal from Order is dismissed.

6. In view of dismissal of Appeal from Order, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)