

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Second Appeal No.347 of 2017
(Chandrashekhar Narayan Malkhde .vs. Smt. Anjanabai Nilkanth Landekar
and ors.)
with
Second Appeal No.348 of 2017
(Chandrashekhar Narayan Malkhde .vs. Smt. Sumitrabai w/o Dattuji Jichkar
and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Shri S.V. Tadas, Advocate for Appellant in both appeals.
Mr. P.A. Abhyankar, Advocate for Respondent Nos. 2 to 4 in SA No.347 of 2017 and for Respondent Nos. 3 & 4 in SA No.348 of 2017.
Mr. V.V. Bhangde, Advocate for Respondent No.7 in both appeals.
Mr. S.G. Malode, Advocate for Respondent No.5 in SA No.348 of 2017.

...

CORAM : Manish Pitale, J.
DATED : April 12, 2018.

The appellant in these two appeals was the original plaintiff in two suits filed by him against the respondents in these appeals seeking a decree of specific performance and other reliefs. It was the case of the appellant (plaintiff) that he had entered into agreements of sale with respondent Nos. 1 and 2 in both the appeals (their position being reversed in Second Appeal No.348 of 2017 as compared to the position in Second Appeal No.347 of 2017). Both the said respondents are sisters who are said to have entered into agreements with the appellant for sale of agricultural land situated in mouza Nari, tahsil Nagpur (Urban) district Nagpur. It was the case of the appellant that both the sisters had entered into agreements of

sale in respect of specific portions of lands belonging to them in the said village.

2. In the case of both the sisters, there were agreements executed one after the other in favour of the appellant. As regards respondent Anajanabai (respondent no.1 in Second Appeal No.347 of 2017), there were two agreements dated 25.11.2002 and 19.08.2003 entered into with the appellant. In respect of respondent Sumitrabai (respondent No.1 in Second Appeal No.348 of 2017), there were three agreements dated 20.11.2002, 08.07.2003 and 09.02.2004 entered into with the appellant. Apart from this, the appellant claimed that powers of attorney dated 09.09.2003 and 08.07.2003 were executed by the aforesaid respondents in his favour in respect of the suit properties, for development of layouts, demarcation of plots and sale of such plots. It was his case before the trial Court that he was always ready and willing to perform his part of the contract as reflected in the aforesaid agreements, but the said respondents being his vendors, were avoiding to perform their part, due to which he was constrained to file two suits as mentioned above. It is relevant to mention here that apart from the aforesaid respondents, the appellant had added other joint owners of properties, part of which were said to be subject matter of the agreements, and the other defendants were those who had subsequently purchased the suit properties from the aforesaid two respondents-sisters.

3. The aforesaid respondents (vendors) opposed the claims made by the appellant in his suits. They claimed that, being illiterate village women in need of money, they had taken hand loans from the appellant and that they had affixed their signatures on certain blank papers, which were misused by the appellant in order to create the aforesaid agreements and other documents, on the basis of which he was seeking relief from the trial Court. They also contended that since the appellant had family relations with them, they had in good faith signed certain documents as they believed that the appellant would help them sort out their disputes and difficulties with the authorities in respect of proceedings undertaken under the Urban Land (Ceiling and Regulation) Act, 1976.

4. On the basis of pleadings of the parties and the evidence led on their behalf, the trial Court framed similar issues in both the suits, pertaining to the existence of the aforesaid agreements, the readiness and willingness on the part of the appellant to perform his obligation under the said agreements and as to whether the said respondents could demonstrate that there was a loan transaction and whether the said agreements could be said to be genuine. The trial Court rendered findings against the respondents and in favour of the appellant, thereby decreeing the suits for specific performance. During the pendency of the suit, the appellant had amended the prayer clause in his suit to incorporate challenge to a partition deed dated 10.03.2006 executed during the pendency of the suits

and subsequent sale deed dated 19.10.2007 also executed during the pendency of the suit. It was claimed that the aforesaid respondents -joint owners had deliberately executed the said partition deed and sale deed in order to defeat the claims of the appellant. In the absence of any issue framed in that regard, the trial Court not only decreed the suits for specific performance but it declared that the partition deed dated 10.03.2006 and sale deed dated 19.10.2007 were not binding on the rights and interests of the appellant.

5. Aggrieved by the same, the respondents filed appeals before the Court of District Judge, Nagpur (appellate Court). The respondents contended before the appellate Court that the decrees had been erroneously granted by the trial Court against them because even if the agreements were taken to be duly executed, there was nothing to show that the respondent Nos. 1 and 2 (vendors) were indeed exclusive owners of specified portions in the suit properties, which were subject matter of the agreements. It was contended that they owned the property in question which was part of joint family property, along with other owners. In the absence of they being exclusive owners of specified portions of properties that were stated in the said agreements, the agreements would not be enforceable at all. Apart from this, it was pointed out that agreements shown to have been executed one after the other, consisted of terms that were progressively against the interest of the aforesaid respondents (vendors) and this did not appear

to be logical. it was also contended that there was hardly any material placed on record to show that the appellant was ready and willing to perform his part of the obligations under the said agreements. The only material on record was a further agreement said to have been entered into by the appellant with a third person, which was also virtually denied by him in his cross-examination.

6. By the impugned judgments and orders passed by the appellate Court in the two appeals filed by the respondents herein, the appellate Court has set aside the judgments and orders passed by the trial Court in the two suits filed by the appellant and the suits have been dismissed.

7. Aggrieved by the said judgments and orders of the appellate Court, the appellant has filed these two appeals. On 23.06.2017, this Court issued notice in both the appeals on identical substantial question of law, which reads as under:-

“Whether the reversal of the finding by the appellate Court that the defendant No.1 was not the owner of the land agreed to be sold is based on evidence available on record?”

8. Mr. S.V. Tadas, learned counsel appearing on behalf of the appellant in both the appeals, submitted that the appellate Court erred in reversing the finding of the trial Court and dismissing the suits filed by the

appellant, because the agreements placed on record were accepted by both the Courts below and that there was sufficient material placed on record by the appellant to show that he was always ready and willing to perform his obligations under the said agreements. It was pointed out that the said respondents (vendors) had failed to enter the witness box. The person who appeared as a witness on their behalf, even though he had no authority in law to depose on their behalf, had given vital admissions, which demonstrated that the impugned judgments and orders passed by the appellate Court were erroneous and that the trial Court was justified in granting decrees in favour of the appellant in the suits filed by him. It was contended that when the properties that were subject matter of the two agreements were stated specifically in the agreements with area and boundaries, the appellate Court was not justified in holding that the agreements were not enforceable.

9. Mr. P.A. Abhyankar and Mr. V.V. Bhangde, learned counsel appearing on behalf of the respondents in the two appeals submitted that the appellate Court was justified in reversing the orders of the trial Court and dismissing the two suits and the findings of the appellate Court were based on proper appreciation of the evidence and material on record. The appellant had failed to demonstrate any perversity in the findings rendered by the appellate Court and that, therefore, there was no substantial question of law arising in the two appeals for entertaining the instant appeals. On the

above quoted substantial question of law upon which this Court had issued notice, it was submitted that a perusal of the impugned judgments and orders would show that the material on record was properly appreciated by the appellate Court to come to the conclusion that the respondents (vendors) were not exclusive owners of the lands that were subject matter of the agreements said to have been executed in favour of the appellant. On this basis, the learned counsel appearing on behalf of the respondents, submitted that the appeals deserved to be dismissed.

10. Since there is a difference of opinion in the findings rendered by the two Courts below on the same material on record, it is necessary to examine as to whether findings rendered by the appellate Court, which is the final Court on facts, are perverse, particularly with reference to the aforesaid substantial question of law.

11. A perusal of the agreements executed in both the cases wherein the aforesaid respondents (vendors) were said to have agreed to sell specified portions of properties that were part of a larger area of property jointly owned by the said respondents with others, it appears that terms of payment in such successive agreements executed between the parties, have changed to the detriment of the aforesaid respondents (vendors). A perusal of the agreements shows that specific area with boundaries have been made subject matter of the said agreements to sale. Yet, other than

such recording of specified areas with boundaries in the said agreements, there is no document on record to show that on the date when the said agreements were executed, the said respondents (vendors) were exclusive owners of such areas of the property. In fact, in one such agreement dated 09.02.2004 executed by Sumitrabai, it is specifically stated that within two months from the date of the said agreement dated 09.02.2004, a partition deed would be executed. The appellate Court has also taken into consideration the revenue record in the form of 7/12 extracts pertaining to the lands in question which demonstrated that the lands stood jointly in the name of four persons and not exclusively in the name of the aforesaid respondents (vendors). It was evident that there was no partition amongst the joint owners on the date when the said agreements were executed. The appellate Court has taken into consideration such material to record its findings that the vendors were not exclusive owners and in possession of the properties that were made subject matter of the agreements executed in favour of the appellant. On this basis, it has been found that the agreements would be unenforceable.

12. On the question of readiness and willingness, the appellate Court has taken into consideration the evidence and material on record. It has found that the pleadings and evidence of the appellant in this regard pertained to his having entered into an agreement with a third person to sell the suit property, which was in turn based on the aforesaid agreements executed with the

respondents herein. It was claimed by the appellant that he had received a certain sum of money from the said third person and that he was, therefore, ready with sufficient funds to satisfy his obligations under the said agreements with the respondents herein. The trial Court heavily relied upon such material to hold that the appellant had satisfied the requirement of readiness and willingness for a decree of specific performance to be passed in his favour.

13. But, the evidence and material on record, particularly cross-examination of the appellant shows that he has virtually denied existence of any such agreement with the aforesaid third person in respect of the suit property. Therefore, even if it is taken that the said agreements were entered into between the parties, there was no material on record to support the contentions of the appellant that he was ever ready and willing to perform his obligations under the said agreements.

14. Thus, the two most crucial aspects in a suit for a specific performance, namely existence of agreements and its enforceability, as also the aspect of readiness and willingness cannot be said to have been proved by the appellant in the instant case. Other than the contents of the said agreements specifying the properties with boundaries as being subject matter of the transactions between the parties, the appellant has not been able to place any material on record to show that on the dates when the said agreements were

executed, his vendors were indeed exclusive owners of such specified portions of land. The denial by the said respondents (vendors), regarding execution of the agreements and the fact that they had cancelled the powers of attorney executed in favour of the appellant, go to show that the trial Court had erred in granting decrees in his favour. A perusal of the impugned judgments and orders also shows that there is no perversity in the findings of facts rendered by the said Court. The findings are based on proper appreciation of the evidence and material on record. Being the final Court on facts, the findings rendered by such first appellate Court cannot ordinarily be interfered with by the second appellate Court exercising jurisdiction under Section 100 of the Civil Procedure Code, 1908, unless error in appreciation of evidence and record is manifest or that the findings are found to be perverse or based on cryptic analysis of the evidence and material on record. In the present case, it cannot be said that the impugned judgments and orders of the appellate Court suffer from any of the aforesaid deficiencies.

15. In the light of the above, the substantial question of law framed by this Court in both the appeals is answered in favour of the respondents and against the appellant. Accordingly the appeals are dismissed with no order as to costs.

JUDGE