

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

Second Appeal No.200 of 2018
(Shrawan s/o Mahipal Hedao (dead) through LRs. And others .vs. Smt.
Pramilabai w/o Ambadas Shesh (dead) through LRs. And others.)

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

Court's or Judge's orders.

Mr. S.R. Radke, Advocate for Appellants.

CORAM : Manish Pitale, J.
DATED : April 17, 2018.

The appellants are legal representatives of the original plaintiff who had filed a suit for specific performance of contract against the respondents. It was claimed by the original plaintiff that there was an oral agreement between him and the defendant no.1 some time in January, 1990. He claimed to have paid an amount of Rs.1,09,500/- in terms of the said alleged oral agreement and that the balance consideration of Rs.90,000/- remained to be paid. According to him, the defendant no.1 refused to execute sale deed in terms of the said alleged agreement in respect of the suit property i.e. house situated on plot No.112, in Bhandara City, due to which he was constrained to file the aforesaid suit for specific performance of contract.

2. It is recorded in the judgment and order dated 01.11.2002 passed by the trial Court in the present case that the original plaintiff appeared and deposed in terms of the pleadings in his suit, but, his evidence was incomplete and later he was not available for cross-

examination. The suit continued to languish before the trial Court at this stage and in this manner for a long period of time and ultimately by the judgment and order dated 01.11.2002, the trial Court dismissed the suit. The trial Court recorded the fact that the original plaintiff had completely failed to support his case and that in the absence of any evidence in support of the pleadings of the original plaintiff, the reliefs claimed in the suit could not be granted.

3. Aggrieved by the said judgment and order of the trial Court, the legal representatives of the original plaintiff filed Regular Civil Appeal No.46 of 2012 before the appellate Court. By the impugned judgment and order dated 13.12.2017, the appellate Court has dismissed the appeal, finding that the original plaintiff had failed to prove the said oral agreement and that there was no evidence on record to prove the essential elements leading to grant of a decree for specific performance, including the issue of readiness and willingness on the part of the original plaintiff. In its judgment, the appellate Court has recorded that the original plaintiff examined himself and deposed in terms of his pleadings but his examination-in-chief was deferred on ten dates between 29.03.2001 and 28.10.2002. It was recorded that even prior to leading evidence, the original plaintiff had sought and he was granted adjournments on 17 dates between 1997 to 2001. When the original plaintiff failed to appear before the Court to complete his evidence and to face cross-examination as also to place on record evidence and

material in support of his pleadings, the appellate Court found that the existence of the alleged oral agreement was not proved and there was no material on record to examine whether the original plaintiff deserved any relief in respect of the said alleged agreement. On this basis, the appeal stood dismissed.

4. Aggrieved by the impugned judgment and order of the appellate Court, the appellants (legal representatives of the original plaintiff) have filed this appeal. Mr. Radke, learned counsel appearing on behalf of the appellants has submitted that even if there was lack of material to demonstrate that the original plaintiff was entitled to a decree for specific performance, an order of refund of earnest amount could have been passed by the Courts below. But, as noted above, since both the Courts below have found that the appellants miserably failed to prove even the existence of the alleged oral agreement, on the basis of which the suit for specific performance was filed, the question of refund of earnest amount did not arise. Since the Courts have rendered findings of facts on the basis of the material available, it cannot be said that this appeal gives rise to any substantial question of law requiring exercise of jurisdiction under Section 100 of the Civil Procedure Code, 1908. Accordingly, this appeal is dismissed with no order as to costs.

JUDGE