

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

SECOND APPEAL NO.248 OF 2017

**Prashant s/o Jagannathrao Dahake**  
**And anr.**

**... Appellants**

**-vs-**

**Sushmatai wd/o Damodharrao Dhamande**  
**And ors.**

**... Respondents.**

Ms Rucha A. Pande, Advocate for appellants.

Ms A. R. Khare, Advocate for respondent No.2.

Shri R. S. Subhedar, Advocate for respondent Nos.1, 3 and 4.

CORAM : A.S.CHANDURKAR, J.

DATE : January 12, 2018

P.C.

The original plaintiffs have filed this appeal being aggrieved by the decree directing the defendants to pay them an amount of Rs.2,00,000/- after which possession was to be handed over to them. In the process their suit for specific performance had been dismissed.

2. It is the case of the plaintiffs that on 23/04/2003 the defendants had agreed to sell agricultural land admeasuring 7 H 92 R to the plaintiffs for a consideration of Rs.4,00,000/-. The earnest amount of Rs.2,00,000/- was paid and the sale deed was to be

executed after the defendants obtain necessary permission from the Collector. According to the plaintiffs no steps were taken by the defendants and hence notice dated 28/12/2006 was issued by them. Suit for specific performance was thereafter filed. According to the defendants, there was no transaction of sale that was intended to be entered into. The plaintiff No.1 and his father were money lenders and the defendants had taken loan from them. Though possession was handed over in the year 2000 the same was illegal. Hence counter-claim was filed seeking possession.

3. The trial Court held that there was an earlier agreement dated 29/01/2000 entered into between the parties. Though this transaction was not completed the evidence on record with regard to the subsequent agreement dated 23/04/2003 was not sufficient to grant a decree of specific performance. It was found that the evidence led by the plaintiffs in that regard was insufficient. The first Appellate Court after re-appreciating the evidence confirmed the findings recorded by the trial Court. In so far as counter-claim is concerned, the same was allowed by passing a decree for possession.

4. It is submitted on behalf of the appellants that there was sufficient evidence on record to indicate that the transaction was one

of an agreement to sell the suit property. In furtherance of that agreement the plaintiffs had been put in possession. The receipt of earnest amount having been proved, both the Courts committed an error in holding that the agreement at Exhibit-26 was not one for sale of that land. Even the report of the Assistant Registrar on the complaint made by the defendants did not reveal any money lending transaction. It was thus submitted that the suit for specific performance ought to have been decreed.

5. It is submitted on behalf of the respondents that both the Courts after considering the evidence have held that the agreement dated 24/03/2003 was not duly proved. The plaintiffs were silent about the earlier agreement dated 29/01/2000. Despite this there was no reference to that agreement in the subsequent agreement. After appreciating the evidence on record relief was refused to the plaintiffs.

6. I have heard the learned counsel for the parties at length and perused the impugned judgment. The evidence indicates that as per Exhibit-38 there was an agreement dated 29/01/2000 entered into between the parties. Possession was handed over to the plaintiffs pursuant to that agreement. There is no reference to this agreement

in the subsequent agreement dated 22/04/2003. Both the Courts after considering this evidence and in view of non-examination of the scribe of the subsequent agreement have held that no transaction of agreement of sale was intended to be entered into. I find that the appreciation of evidence by both the Courts does not result in recording any perverse finding. The counter-claim filed by the defendants has been rightly decreed by directing the original plaintiffs to pay back an amount of Rs.2,00,000/- to the defendants.

7. In view of aforesaid the second appeal does not give rise to any substantial question of law. Same is therefore dismissed. No costs.

**JUDGE**