

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

Second Appeal No. 393 of 2017

Gaurishankar s/o Narayan Shende -vs- Dharmendra s/o Dashrath Nandardhane and others

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

Court's or Judge's Orders.

Shri R.A. Gupte, Advocate for Appellant.

Shri R.P. Bode, Advocate for Respondent No.1 and 2.

CORAM : A.S.CHANDURKAR, J.

DATE : 26/06/2018.

The appellant is the original plaintiff is aggrieved by the dismissal of his suit for specific performance which decreed has been confirmed by the appellate Court.

On 28/03/1998 the plaintiff and the defendant No.1 entered into an agreement with regard to the Plot Nos. 109 and 115. These two plots were to be sold to the plaintiff for consideration of Rs. 60,000/- (Rs. Sixty Thousand only). Earnest amount of Rs. 25,000/- (Rs. Twenty Five thousand only) was paid on 01/08/1998. The sale deed was executed in favour of the plaintiff with regard to the plot No. 109. Thereafter on 24/12/2001 plot No. 115 was sold by the defendant No.1 to the defendant No.2. The plaintiff thereafter issued a notice and filed the aforesaid suit on 19/09/2002 seeking specific performance of the agreement and cancellation of the sale deed executed in favour of defendant No.2.

According to the defendant No.1 sale deed of plot No. 109 was duly executed in favour of the plaintiff. The plaintiff was not ready and willing to purchase the plot No. 115. Hence, the same was sold to defendant No.2.

The trial Court after considering the evidence on record held that the plaintiff failed to prove his readiness and

willingness to perform his part of the agreement. The suit came to be dismissed on the ground of absence of the plaintiffs readiness and willingness. The appellate Court confirmed that decree.

The learned Counsel for the appellant submitted that the plaintiff was always ready and willing to perform part of the agreement. Time was not the essence of the contract and only after getting knowledge of execution of the sale deed in favour of defendant No.2, the present suit was filed. The amount of Rs. 25,000/- was lying with the defendant No.1 and therefore the decree for specific performance ought to have been passed. Moreover, the defendant No.1 had failed to prove that the contract was orally cancelled.

The learned Counsel for the respondent supported the impugned judgment. He submitted that the finding with regard to absence of plaintiffs readiness and willingness was a finding of fact which was affirmed by the appellate Court. The only notice issued by the plaintiff was on 24/06/2002 after the plot was sold to defendant No.2. Even if the oral cancellation of the agreement was not proved, the Courts were justified in dismissing the suit as the plaintiff was not ready to perform his part of the contract.

I have heard the learned Counsel and I have perused the impugned judgment. The evidence on record indicates that the permission to convert the land for non-agricultural use was duly received for both the plots. The defendant No.1 had forwarded a map to the plaintiff in respect of plot No.109 on the basis of which the plaintiffs name was mutated. The documents at Exhibits No.69 to 71 have been taken into consideration to indicate grant of this permission. The plaintiff purchased plot No.109 on 01/08/1998 and

thereafter did not take any steps whatsoever for completing the transaction with regard to the plot No. 115. Only after it was sold to the defendant No.2 on 24/12/2001, that the plaintiff issued the notice .

I find that both the Courts have appreciated the evidence with regard to the plaintiffs readiness and willingness to conclude that the same was not duly proved. The appreciation of evidence in that regard cannot be stated to be perverse. Even though the defendant No.1 failed to prove the oral cancellation of the agreement as pleaded, in absence of plaintiffs readiness and willingness no relief could be granted to them. Both the Courts have exercised discretion in refusing to grant specific performance. No interference is therefore called for. The Second Appeal is dismissed with no order as to costs.

JUDGE