

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

**SECOND APPEAL NO.607 OF 2018**

(Ramdeobaba Developers & Builders Pvt. Ltd. and another ..vs.. Sau. Chhaya Kishorsingh Chandel)

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

Court's or Judge's orders

Shri R.D. Dharmadhikari, Counsel for the appellants.

**CORAM : ROHIT B. DEO, J.**

**DATED : 04-12-2018**

This appeal preferred under Section 100 of the Civil Procedure Code is assailing the judgment and decree 23-1-2015 passed by the learned 3<sup>rd</sup> Joint Civil Judge, Junior Division, Wardha in Regular Civil Suit 179/2012, by and under which the claim of the respondent for specific performance is granted and the confirmatory judgment dated 31-7-2018 rendered by the learned *Ad hoc* District Judge-1, Wardha in Regular Civil Appeal 42/2015 .

2. Concededly, no evidence is adduced on behalf of the defendant.

3. Both the Courts below have recorded a finding of fact that the plaintiff was ready and willing to perform her part of the contract. Despite the strenuous effort of the learned Counsel Shri R.D. Dharmadhikari to persuade me to hold otherwise, I do not see any error in the concurrent finding of fact recorded. It is not in

dispute that what was agreed to be sold is plot which forms part or portion of agricultural field bearing Survey 262/2. It is further undisputed that the plaintiff paid part consideration of Rs.1,20,000/- out of the total consideration of Rs.3,35,660/-. The case of the plaintiff, which is accepted and believed by both the Courts below, is that despite her attempt to persuade the defendant-developer to make available copy of the conversion order, the copy was not supplied. This is the justification by the plaintiff for withholding the subsequent installments.

4. In the absence of evidence, the entire case of the plaintiff has gone virtually un rebutted. The emphasis placed by Shri R.D. Dharmadhikari on condition 5 of the agreement, which speaks that the map of the plot and the “order” shall be supplied on the date of execution of the sale-deed, does not take the case of the defendant any further. While it is possible to accept that the physical copy of the map and the order was to be supplied to the plaintiff as on the date of execution of the sale-deed, there is no evidence on record to suggest that the plaintiff was at least informed that the user of land is converted from agriculture to non-agriculture.

5. No error either in the approach or the appreciation of evidence or the principles of law applied to the facts on record is apparent. The second appeal

does not raise any question of law much less substantial question of law and is, therefore, dismissed.

**JUDGE**

*adgokar*