

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

SECOND APPEAL NO.37 OF 2017

Prabhudas s/o Bhikalal Buddhadev (Dead) Thr. LRs Narendra s/o Prabhudas Buddhadev & ors.

-vs-

Murlidhar s/o Vyankoba Chiddarwar

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

Court's or Judge's Orders.

Shri S. S. Dhengale, Advocate for appellants.

Shri Rahul Tajne, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : June 25, 2018

Heard.

The appellants are the original defendants in the suit for specific performance filed by the respondent. It is the case of the original plaintiff that on 06/01/2005 an agreement for sale of house property was entered into between the parties. The total consideration agreed was Rs.8,15,000/-. Amount of Rs.1,00,000/- was paid to the defendant on the same day and further amount of Rs.3,00,000/- was to be paid by the end of April 2005. The sale-deed was to be executed by 30/10/2005 by making the balance payment. It was agreed that possession would be handed over on execution of the sale-deed. According to the plaintiff the defendant was not willing to perform his part of the agreement and therefore a notice was issued to the defendant on 02/12/2005. Thereafter suit for

specific performance was filed on 10/02/2006.

2. In the written statement a stand was taken that the agreement was executed as a security for the amount borrowed by the plaintiff. The signature of defendant was obtained on blank papers and that it was never agreed to sell the suit property to the plaintiff.

3. The trial Court held that the agreement was duly proved and that the plaintiff was ready and willing to perform his part of the agreement. The defence as raised was held to be not proved. The suit was accordingly decreed. The appeal filed by the original defendant was also dismissed. Hence the present second appeal.

4. Notice was issued on the following substantial question of law :

“ Whether the respondent could claim that they are in possession of the suit property in view of the agreement Exhibit-16 and Exhibit-18 which are unregistered documents ? ”

5. It is submitted by the learned counsel for the appellants that possession of part of the suit property was handed over to the plaintiff after the agreement was executed. As the agreement was

unregistered it could not be taken into consideration and no decree for specific performance could have been passed. It was then submitted that the evidence on record had not been properly appreciated and the discretion in favour of the plaintiff had been wrongly exercised. It is thus submitted that the decree for specific performance as passed is liable to be set aside.

6. The learned counsel for the respondent supported the impugned judgment. According to him before the trial Court the agreement in question was duly impounded as per the order passed below Exhibit-31 and necessary stamp duty was paid. The trial Court accordingly held that the said document was admissible in evidence. On the aspect of registration of the said document the learned counsel for the respondent placed reliance on the decision in *S. Kaladevi vs. V. R. Somasundaram and ors.* 2010(3) ALL MR 477 and the decision in *Sham Pundlalik Dhumatkar and anr. vs. Smt. Pushpa Mohanlal Talreja and ors.* 2017 (1) ALL MR 65 to urge that the agreement could be relied upon to grant the relief of specific performance.

7. On hearing the learned counsel for the parties I find that both the Courts have rightly exercised discretion in favour of the

plaintiff while passing the decree for specific performance. The agreement dated 06/01/2006 at Exhibit-16 has been duly proved. The defence raised that the said document was executed by way of security has not been proved. The readiness and willingness of the plaintiff is also held to be duly proved by both the Courts. As regards the contention that the said agreement was not registered, it is not in dispute that the agreement was impounded before the trial Court and was thereafter admitted in evidence. The decisions relied upon in case of *S. Kaladevi* and *Sham Pundlalik Dhumatkar* (supra) support the submissions made on behalf of the respondent. Even though the agreement was unregistered it could be taken into consideration as evidence of the agreement of sale.

8. In that view of the matter, mere fact that the agreement at Exhibit-16 and the further document at Exhibit-18 was unregistered would not affect the case of the plaintiff. In view of the aforesaid answer to the substantial question of law, no interference is called for with the adjudication of the appellate Court.

The Second Appeal is thus dismissed with no order as to costs.

JUDGE