

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 612 OF 2018

Shakil s/o Mubaak Kureshi,
Age 50 years, Occupation Business,
R/o Belapur Bk., Tal. Shrirampur
Dist. Ahmednagar. ..Appellant.

Versus

1. Krushna w/o Mohan Barvekar,
Age 55 years, Occupation Business,
R/o Sonai Tal. Newasa Dist.
Ahmednagar.
2. Ashok s/o Mittu Darandale,
Age 65 years, Occupation Agri.,
R/o Sonai Tal. Newasa Dist.
Ahmednagar. ..Respondents

...
Mr. Mobin H. Shaikh, Advocate holding for Mr. J.I.
Shaikh, Advocate for appellant.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 08-01-2019.

ORAL ORDER :

1. Heard learned advocate Mr. Mobin H. Shaikh holding for Mr. J. I. Shaikh for appellant. Case is not made out to even issue notice to the respondent.
2. Appellant is the original plaintiff who had filed Special Civil Suit No.05 of 2010 (Old Special Civil Suit No.81 of 1999) for specific performance of the contract and the consequential prayer of

injunction was prayed. The plaintiff had come with a case that, he had entered into a contract with defendant No.1 on 26-08-1991 to sell the licence of Forest Department for a consideration of Rs.1,20,000/-. He gave amount of Rs.10,000/- as earnest. Thereafter, he had also paid amount of Rs.5,000/- on 21-09-1991, Rs.60,000/- on 14-12-1991 to defendant No.1. Thus, in all he had paid amount of Rs.75,000/- towards the transaction. It was agreed that, defendant No.1 would execute sale deed on 15-01-1992 by paying the remaining amount of consideration. However, unless the licence would have been in the name of plaintiff, the sale deed could not have been executed. For transfer of the licence, plaintiff as well as defendant No.1 filed application before Deputy Forest Conservator, Forest Department, Ahmednagar. In pursuant to the same, public notice was issued by Forest Department and invited objections. One Tukaram Sonyabapu Shende raised objection and he filed Regular Civil Suit No.06 of 1992 before Civil Judge, Junior Division, Newasa for permanent injunction. That suit came to be disposed of on 10-03-1999. Thereafter, said Tukaram filed Regular Civil Suit No.28 of 1994, before Civil Judge, Senior Division, Shrirampur against defendant No.1 for permanent injunction. At that time defendant No.1 informed to plaintiff that, he will not be able to execute the sale deed within limitation. Plaintiff is ready and willing to perform his part of the contract. Defendant No.1 had given actual possession of the plant and machinery to plaintiff on 20-04-1992 and gave possession receipt for the same. He also

gave permission to the plaintiff to run the saw mill till the sale deed is executed. Since then plaintiff is running the saw mill and he is giving rent of Rs.500/- per month to defendant No.1 for the same. Plaintiff was in financial need, and therefore, defendant No.1 returned amount of Rs.35,000/- to the plaintiff, however on 23-02-1999 plaintiff gave amount of Rs.20,000/- to defendant No.1, and on the same day again a contract was entered into. Defendant No.1 came to saw mill on 18-05-1999 and asked the plaintiff to vacate the same. Hence, the suit was filed.

3. By way of amendment it has been stated that, the license is now standing in the name of defendant No.3. In the suit the plaintiff prayed for specific performance of the contract and alternatively he prayed for return of earnest amount.

4. Defendant No.1 resisted the claim of the plaintiff. It was stated that, he was in need of money and therefore he asked one Gajabapu Muktaji Varghude to extend amount but that person took him to defendant No.1. According to him he has obtained loan of Rs.30,000/- from defendant No.1. Plaintiff gave amount of Rs.10,000/- at the interest of 5 % per month and also took a promissory note for Rs.20,000/-. He has denied that, any contract was entered into in respect of license with the plaintiff. It is stated that, property No.453-A situated at village Sonai Tal. Newasa was sold by him to defendant No.2 on 19-02-1999. He had given the saw mill to be run to defendant No.2 from 01-03-1999.

5. Defendant No.2 had filed separate written statement stating that, he has purchased the suit property from defendant No.1. He is a bonafied purchaser and he is running the saw mill in the suit land on rent @ of Rs.6,000/- per month.

6. Though defendant No.3 was added as a party on 12-07-2011 however the suit was dismissed as no steps were taken to serve her.

7. Taking into consideration the rival contentions, issues were framed and then parties went to trial. After hearing both sides, the learned trial Court has partly allowed the suit. The prayer of specific performance was rejected, however it was found that plaintiff is in possession of the some of the property, and therefore, permanent injunction was granted stating that unless due procedure of law is adopted the plaintiff should not be dispossessed.

8. The plaintiff came in appeal to challenge the said Judgment and decree of the trial Court. It will not be out of place to mention here that, during the pendency of the appeal original defendant No.3 expired but no steps were taken to bring her legal representatives on record, and therefore, the appeal had abated against her. After hearing both sides the appeal was dismissed.

9. The advocate for the appellant has submitted that, both the Courts below have not appreciated the evidence properly. When the

plaintiff was held to be in possession of the suit property, both the Courts below failed to exercise the discretion in holding that there ought to have been a contract as contended by the plaintiff and ought to have granted specific performance. Therefore, substantial question of law is definitely arising which has to be dealt with in this case.

10. The important point firstly that is required to be considered is that, the plaintiff was seeking specific performance of contract of transfer of license granted by Forest Department to the defendant No.1 in his favour. The first and the foremost question is whether the license can be so transfer. This point has been definitely dealt with by both the lower Courts and they had arrived at the conclusion that the said license is subject to rules and regulations of the department and subject to statutory provisions, it cannot be regulated by agreement between the two private parties. Further whether to transfer the licence in the name of a particular person is within the domain of the competent authority. Plaintiff cannot ask for the specific performance of the same. It will not be out of place to mention here that, in fact in addition both the Courts ought to have consider as to whether such agreement is sustainable under Section 23 of the Indian Contract Act. If such transfers are allowed between the two private parties by eliminating the domain of the competent authority, then it would be against the public policy. Therefore, definitely the said contract was hit by Section 23 of the

Contract Act. No statutory provisions have been pointed out that, without the intervention of the Forest Department such transfer between the two private parties could have been allowed.

11. During the pendency of the suit it appears that the license stood in the name of defendant No.3. She was added as a party, however the suit was dismissed as against her as no steps were taken to serve her. Further it is to be noted that, though she was made a party in appeal and the fact was brought on record that she expired, her legal representatives were not brought on record. Under such circumstance both the Courts below were justified in rejecting the discretionary as well as equitable relief to the plaintiff. Hence, no substantial question of law is made out. The second appeal is **not admitted**, hence stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.