

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 805 OF 2016
WITH
CIVIL APPLICATION NO.1596 OF 2016
IN
SECOND APPEAL NO.805 OF 2016**

Asha Jayprakash Katakdhond ...Appellant

V/s.

Mahadev Shrirang Pandhare & Ors. ...Respondents

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Shri Anand S. Kulkarni, advocate for the appellant.

Shri S. S. Shah, advocate for the respondent Nos. 1 to 5.

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CORAM : M.S.KARNIK, J.

DATE : 17th JUNE, 2019

P.C. :

1. Heard learned counsel for the appellant and learned counsel for respondents.
2. The respondent No. 1 claims to be the owner of the plot of land, in respect of which the agreement of sale (Exh. 55) was executed on 08/02/2006 in favour of the appellant. The appellant is the original plaintiff, who had filed the suit for specific performance of the agreement dtd.08/02/2006. It is the

contention of the appellant/original plaintiff that by virtue of the execution of said agreement, the respondent No. 1 had agreed to sell the suit property for a total consideration of Rs.1,49,500/-. On the date of execution of the agreement, the appellant paid earnest amount of Rs.45,000/- to the respondent No. 1.

3. It is the submission of the learned counsel for the appellant that the appellant was always ready and willing to perform his part of the contract. He invited my attention to the agreement (Exh.55) and the relevant clauses therein. He also invited my attention to the relevant portions of the evidence of the witnesses to show that such an agreement was duly executed and that the amount of Rs.45,000/- as earnest money was paid. Learned counsel for the appellant also pointed out that time and again he had requested the respondent No. 1 to accept the balance consideration and that therefore the appellant was ever ready and willing to perform the part of the agreement. Learned counsel for the appellant submitted that he has raised a specific plea of readiness and willingness to perform

her part in the plaint.

4. Heard learned counsel. My attention is invited to the findings of the courts below.

5. Upon going through the agreement, it reveals that there are corrections and interpolations at many places. The appellant has made out a case that on the date of execution of the agreement, a sum of Rs.45,000/- was paid as earnest money. However a specific stand was taken by the respondent No. 1 that the said agreement was executed as and by way of security towards the loan of Rs.30,000/-, which the respondent No. 1 had taken from the appellant. According to the respondent No. 1 he was in need of money to defend the various suits which were filed for partition and other reliefs. In these circumstances, the respondent No. 1 approached the appellant for loan. Apart from the detailed reasons given by the trial court and the appellate court holding against the appellant even I find from the evidence of the appellant who was PW-1 and was examined at Exh. 23, is not at all reliable. She has deposed that a sum of Rs.45,000/- was paid on the date of the agreement. She has

further deposed in her cross-examination that in 2006 the respondent No. 1 was in need of money and therefore approached her demanding money. She has further deposed that the suit property is situated in the heart of Solapur City. She could not tell as to in whose handwriting the additional writing in the agreement of sale is. She could not remember whether the amount shown in the agreement of sale was paid by her to the respondent No. 1 on the date of agreement of sale or prior to that date. She further made out a case that an amount of Rs.23,000/- over and above the amount of Rs.45,000/- was paid by her to the respondent No. 1. However, no details as to when this payment was made and proof thereof is forthcoming.

6. It would be material to note that that PW-2 was examined by the plaintiff. In his examination, he stated that a sum of Rs.30,000/- was handed over to the respondent No. 1 on the date of the agreement and the remaining Rs.15,000/- was paid to the respondent No. 1 on the next date. There are various discrepancies in his evidence. The evidence of PW-1 on the payment of Rs.45,000/- on the same day is not corroborated by

PW-2. The evidence of defendant on the record would go to show that he received an amount of Rs.30,000/- and hence the conclusion drawn by the courts below that the agreement was by way of security towards the loan amount cannot be found fault with.

7. I do not find any reason to interfere with the concurrent findings on facts recorded by the courts below. Even, the finding as regards the readiness and willingness to perform her part of agreement, the appellant failed to prove the same, for which the courts below has given proper reasons.

8. I do not find that the present appeal involves any substantial question of law. Therefore, the same is dismissed with no order as to costs.

9. In view of the dismissal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)