

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 324 OF 2018
WITH
CIVIL APPLICATION NO. 344 OF 2018

Smt.Sudha Narayan Munishwar .. Appellant
Vs.
Shri Ananda Pandurang Bhosale and ors. .. Respondents

ALONG WITH
SECOND APPEAL STAMP NO. 14358 OF 2018
WITH
CIVIL APPLICATION NO. 1150 OF 2018

Suhas Jaysing Patil and ors. .. Appellants
Vs.
Shri Ananda Pandurang Bhosale and ors. .. Respondents'

Mr.Prajakt M.Arjunwadkar, for the Appellant in SA/324/2018.
Mr.Nikhil Wadikar I/b Mr.Nandu V.Pawar, for Appellants in
SAST/14358/2018.
Mr.Swaroop M.Karade, for Respondent No.1 in both SAs.

CORAM : M.S.KARNIK, J.

DATE : 31st JULY, 2019

P.C. :

. SA/324/2018 is filed by the original defendant No.1.

SAST/14358/2018 is filed by the original defendants No. 2 & 3. Since common judgment and decree of the Courts below is challenged, the Appeals are disposed of by this common order.

2. The appellants have challenged the judgment and decree of the First Appellate Court dismissing the Appeals. Before the First Appellate Court the judgment and decree of the trial Court thereby decreeing the Suit for specific performance of agreement dated 28/06/2008 was challenged. Defendant No.1 is the original vendor. It is the case of the present respondent No.1 original plaintiff that by an agreement dated 28/06/2008, the property belonging to defendant No.1 which is described in the agreement was agreed to be sold to the plaintiff. The agreement for sale was executed on 18/06/2008 and earnest amount of Rs.35,000/- was paid out of total consideration of Rs.75,000/-. It was agreed that sale deed would be executed within 11 months after execution of agreement for sale.

3. The possession of the suit property was handed over

to the plaintiff at the time of agreement of sale.

Though the plaintiff was willing to pay balance consideration of Rs.40,000/- and requested defendant No.1 for execution of sale deed, defendant No.1 avoided to do so. By letter dated 05/05/2009, plaintiff called upon defendant No.1 to execute the sale deed.

4. It is further case of the plaintiff that with a view to avoid executing the sale deed, defendant No.1 colluded with defendants No.2 & 3 and executed sale deed dated 08/09/2009 in favour of the defendant No.2. Hence, Suit for specific performance of contract and for cancellation of the sale deed dated 08/09/2009 was filed.

5. Learned Counsel for the appellants would submit that the Courts below committed an error in decreeing the Suit for specific performance. According to them, the suit property is not described properly and therefore, the decree itself cannot be

executed. My attention is invited to Section 12 of the Specific Relief Act to contend that when the property itself is not described property and therefore it cannot be properly identified. In such a situation, question of seeking relief under specific relief act does not arise.

6. I have gone through the findings recorded by the Courts below. Learned Counsel for the respondents invited my attention to the deposition of defendant No.1 -Vendor. In the cross examination of defendant No.1 it is clearly stated that the property which is described in the agreement of sale dated 28/06/2008 is very much in existence. He would also invite my attention to the deposition of defendant No.2 who has stated that it is true that suit property which is the subject matter of the agreement of sale is very much in existence.

7. Insofar as the execution of the agreement of sale dated 28/06/2008 is concerned, the Courts below have held that there is no challenge to the evidence led by the plaintiff to

prove execution of the agreement and therefore the agreement has been duly proved.

8. It is one of the contention of the learned Counsel for the respondents that the agreement of sale in fact is a leave and licence agreement not one of sale. However, document dated 28/06/2008 does not make any provision for any monthly compensation. It states that upon receipt of earnest money, balance consideration was to be paid within 11 months. In the document there is a reference that after the payment of balance consideration, sale deed would be executed. Not only possession is handed over to the plaintiff but even there is no dispute that taxes of the property are thereafter are paid by the plaintiff. The Courts below therefore came to the conclusion that document in question cannot be said to be a leave and licence agreement, but having regard to the clauses mentioned therein, the said document in fact is an agreement for sale.

9. Another contention raised by the learned Counsel for the respondents is that property is owned not only by defendant

No.1, but even by defendant No.3 and the same was jointly purchased by defendants No. 1 & 3 who are residing together. It is obvious that the said contention is raised only with a view to defeat the agreement for sale as sale deed by defendant No.1 in favour of defendant No.2 on 08/09/2009 would reveal that even in this document name of the owner is mentioned as defendant No.1. It is also pertinent to note that defendant No. 2 is son of defendant No.3 & therefore obviously aware of the earlier transaction.

10. The Courts below have arrived at the finding that the plaintiff is ready and willing to perform his part of contract and which is based on the evidence on record. Considering the admissions of defendants No.1 & 2 & the findings of the Court, it cannot be said that the description of the suit property is incorrect. Defendants No.1 & 3 have stated that property described in agreement of sale is very much in existence.

11. Defendant No.2 claims to be the bonafide purchaser for value without notice. The Courts below have noted that

agreement of sale dated 28/06/2006 would be binding on the defendant No.1. The Courts below have come to the conclusion that agreements executed in favour of the defendant No.2 are not proved to be genuine. It is material to note that defendant No.1 was in relationship with defendant No.3. Defendant No.2 is the son of defendant No.3 and it is in these circumstances, the Courts below held that defendant No.3 was well aware of the transaction regarding the suit premises and hence cannot be said to be a bonafide purchaser. The Appellate Court has recorded a finding that execution of sale deed in favour of defendant No.2 appears to be after thought to avoid specific performance of contract in favour of plaintiff.

12. I see no reason to interfere with the concurrent findings of fact recorded by the Courts below. Present Appeals do not involve any substantial questions of law. Appeals are dismissed. In view of dismissal of the Appeals, all Civil Applications stand disposed of.

(M.S.KARNIK, J.)