

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

**SECOND APPEAL NO. 709 OF 2017
WITH
CIVIL APPLICATION NO. 1403 OF 2017**

Vijay Sadashiv Rane	... Appellant
Versus	
Rajesh Arun Deshmukh	... Respondent

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Mr. Sanjiv A. Sawant i/b Mr. C.B. Khambekar for the Appellant.
Mr. M.J. Jamdar for the Respondent.

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CORAM : SANDEEP K. SHINDE, J.

DATE : 20th FEBRUARY, 2019.

P. C.:

1. The plaintiff's suit for specific performance of contract dated 6th December, 2007 was dismissed and this decree was confirmed in Regular Civil Appeal No.145 of 2012 by judgment and order dated 6th October, 2016. It is against the decree passed in Regular Civil Appeal No.145 of 2012, the plaintiff has preferred this appeal.

2. I will refer the parties by their status in the trial Court.

3. Heard learned Counsel for the parties. Perused the compilation of documents submitted by the appellant.

4. Plaintiff sought specific performance of the suit agreement dated 6th December, 2007, whereby it is claimed that the defendant had agreed to sell suit property to him for consideration of Rs.7,90,000/-. It is averred that Rs.2,00,000/- were paid on execution of the suit agreement and balance was payable at the time of execution of sale-deed, in presence of the Sub-Registrar.

5. I have perused the suit agreement. It was agreed between the parties that the sale-deed would be executed, only after purchaser, the plaintiff is satisfied about title of the defendant and the defendant was obliged to submit the certified true copies of the documents of his title. Clause-6 contemplates that sale-deed would be executed within one year, however, the period of one year was altered and reduced to six months.

6. I have perused the plaint, wherein it is averred that the suit land was measured on 16th February, 2008 by the Survey Officer and on the same day physical possession of the suit land was handed over to the plaintiff for constructing the compound wall. It is further averred that the plaintiff started construction of boundary wall and repairing the poultry shed and for that purpose invited the quotations. It is further averred that he has awarded the contract to a contractor and spent around

Rs.1,00,000/- (Rupees One Lakh Only) for construction of boundary wall and for repairing the poultry shed which was in the suit land. The plaintiff would assert that he had planted various trees and started cultivating the suit land uninterruptedly since February-2008.

7. That, in paragraph 9, the plaintiff averred that on 27th April, 2008 he was ready and willing to pay the balance amount to the defendant, but the defendant did not accept it. It is his case that defendant refused to accept the balance consideration as he wanted to revalue the suit land. It is plaintiff's case that again on 6th May, 2008 he requested the defendant to accept balance consideration, but it was refused as till that date the valuation was not done by him. It is averred that on 28th May, 2008 the plaintiff through his representative approached the office of the Sub-Registrar with the draft of sale-deed and for fixing date for registration and approached the defendant for obtaining copies of 7/12 extract of the suit land. It is his case that the defendant had given copies of 7/12 extract on 13th June, 2008. It is plaintiff's case that on 24th June, 2008 defendant refused to execute the sale-deed and therefore vide notice dated 25th June, 2008 called upon the defendant to accept the balance consideration and execute the sale-deed. This notice was replied

by the defendant on 30th June, 2008. It may be stated that the notice dated 25th June, 2008 was issued by Advocate on behalf of the plaintiff and one Mr. Raghunath Hawaldar Singh.

8. The defendant replied the said notice and denied the subject agreement. He denied that he had ever agreed to sell the land to Raghunath Hawaldar Singh, who then vide notice dated 25th June, 2008 called upon the plaintiff to execute the sale-deed in his name.

9. The suit for specific performance was resisted by the defendant contending that the plaintiff failed to pay the balance consideration, though he repeatedly demanded it. That, possession of the suit land was not handed over to the plaintiff. It is defendant's case that he was doing the business of poultry, but has suffered the losses due to bird-flue and in the given circumstances had agreed to sell the land to the plaintiff. It is contended that he was in dire need of money, however the defendant did not pay it in time and therefore he was required to borrow loan from Citi Bank on 30th May, 2008.

10. Both the Courts below have rendered a findings of fact, that the plaintiff had failed to prove his readiness and willingness to perform his part of the contract and having found that the plaintiff was not having sufficient amount to pay the balance

consideration. The Courts below have taken into consideration the conduct of the plaintiff, and thus refused to exercise jurisdiction under Section 20 of the Specific Relief Act.

The general rule is that the High Court will not interfere with the concurrent findings of the Courts below, but it is not an absolute rule. Some of the well recognised exceptions are :

- (i) Where the Courts below have ignored the material evidence or acted on no evidence;
- (ii) The Courts have drawn wrong inferences from very proved facts by applying the law erroneously or;
- (iii) The Courts have wrongly cast the burden of proof.

11. Facts of the case do not fall in either of three exceptions as carved out.

12. In the case in hand the Courts below have refused the relief of specific performance having found that the appellant was not ready and willing to perform his part of the contract and upon taking into consideration the conduct of the appellant.

13. That, so far as readiness and willingness to perform the part of contract is concerned, I have perused the evidence. The Courts below held that averments in the plaint were not substantiated by convincing evidence. The First Appellate Court found that at the material time the plaintiff had no sufficient balance at his account.

14. It is to be noted that the suit notice dated 25th June, 2008 was issued by Advocate Khambekar, on behalf of the plaintiff and one Raghunath Hawaldar Singh, whereby defendant was called upon to execute the sale-deed. It is interesting to note that a draft sale-deed was prepared by the plaintiff wherein the plaintiff and Raghunath Hawaldar Singh were the proposed purchasers.

15. Under the draft sale-deed consideration was reduced to Rs.1,20,000/- from Rs. 7,90,000/-.

16. Admittedly, Raghunath Hawaldar Singh was not party to the suit agreement, however, vide suit notice the defendant was called upon to execute the sale-deed also in favour of Raghunath Hawaldar Singh and draft sale-deed shows consideration was Rs.1,20,000/-. This fact clearly indicates that the plaintiff herein was not interested to perform his part of the contract for obtaining the sale-deed in his name. Draft sale-deed produced on record by the defendant shows that Mr. Raghunath Singh was interested in the suit land, as evident from recitals. The plaintiff has not explained how and why Mr. Raghunath Singh crept in. Thus, the Courts below have rightly exercised the discretion and declined specific performance by taking into consideration conduct of plaintiff.

17. I have also perused the pleadings of the plaintiff and his evidence. He pleaded that the possession of the suit property was handed over to him. The plaintiff attempted to prove his possession by producing some vouchers, bills being amount expended for construction of the boundary wall. However, in cross examination he admitted that neither he had repaired the poultry shed standing in the suit property nor possession was handed over to him. It shows the plaintiff had not approached the Court with clean hands.

18. Learned Counsel for the appellant however submitted that the balance consideration was payable at the time of execution of the sale-deed and that too in presence of the Sub-Registrar. It is therefore contended that he was not obliged to pay the same before the execution of sale-deed. It is therefore contended that the recitals of the agreement to sale (suit agreement) were not appreciated by the Courts below in right perspective, and as such it gives rise to the substantial question of law.

19. In my view, the submission has no substance, because the plaintiff pleaded that he attempted to tender the balance consideration to the plaintiff on 27th April, 2008 and on 6th May, 2008, but on both the occasions the defendant refused to accept

it. However, now the arguments advanced are contrary to pleadings and evidence. In fact, upon appreciating the evidence, the Courts below found that the plaintiff has had no sufficient fund to pay the balance consideration. The Courts below at the same time perused the draft sale-deed, the suit notice and concluded that plaintiff was neither interested in the suit transaction nor he has performed his part of the contract.

20. The appeal therefore does not give rise any substantial question of law. The appeal is accordingly dismissed. In view of dismissal of appeal, civil application does not survive and it is disposed of.

21. Learned Counsel for the appellant submits that the respondent-defendant be restrained from creating third party interest in the suit property for a period of four weeks.

22. Taking into consideration the facts of the case and particularly a draft sale-deed produced on record by the plaintiff himself, I am not inclined to pass any restraint order.

(SANDEEP K. SHINDE, J.)