

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**SECOND APPEAL NO. 88 OF 2016**  
**ALONGWITH**  
**CIVIL APPLICATION NO. 139 OF 2016**

|                               |                 |
|-------------------------------|-----------------|
| Mr. Subhash Kisanrao Khade    | ....Appellant   |
| V/s.                          |                 |
| Mr. Ramchandra Baburao Tapkir |                 |
| and Ors.                      | ....Respondents |

\* \* \* \*

Mr. Kamlesh Prakash Mali, Advocate for the appellant.

None for the respondents.

**CORAM : SANDEEP K. SHINDE, J.**

**Monday, 11<sup>th</sup> February, 2019.**

**P.C. :**

1. Heard learned Counsel for the appellant.
2. The appellant-plaintiffs suit for specific performance of the agreement dated 23<sup>rd</sup> December, 1991 was dismissed by the trial Court. The decree of the trial Court was confirmed in Regular Civil Appeal No. 358 of

2007 by judgment dated 26<sup>th</sup> June, 2015. It is against the decree in Civil Appeal No. 358 of 2007, the plaintiff has preferred this Appeal.

3. With the assistance of the learned Counsel for the appellant, I have gone through the evidence, plaint and the suit agreement dated 23<sup>rd</sup> December, 1991.

4. Both the Courts below predominantly recorded a finding of fact that the plaintiff has failed to prove a concluded agreement of sale was executed between himself and the defendants. The Appellate Court in para-11 of its judgment has held as under :

*“11. Under such circumstances, upon a plain reading of the contents in the document exh.69 it is found that, the condition no.2 in it specifically reads that, the agreement of sale i.e. SATHEKHAT was to be executed within a period of 3 months from the date 23/12/1991 on payment of Rs.1,80,000/- by the appellant to the respondents. Not only that, even the condition no.5 in that*

*document exh.69 specifically reads that, in case of failure of execution of the agreement of sale i.e. SATHEKHAT within a period of 3 months as agreed, then the document bearing nomenclature VISAR PAWATI vide exh.69 will be deemed to have been cancelled.”*

5. Both the Courts below have taken into consideration more than one circumstance to hold that the suit agreement was not a concluded contract. On the plain reading of the suit contract, it cannot be disputed that within three months from the execution of it, the parties thereto, had agreed to execute an agreement to sell and not the sale-deed. Besides, it is not in dispute that the suit contract was executed by defendants no.1 to 4 and the other co-sharers were not a party to it. Clause-Seven of the suit agreement indicates that, other than the executant, there were other co-sharers and after settling the terms amongst them, the agreement to sell would be executed within three months. Both the Courts below thus correctly concluded that on the plain reading of the suit contract and

the evidence led by the parties to the suit, it cannot be said that there was a concluded contract between the parties of which enforcement could be decreed. In my view, the finding is consistent with the oral and documentary evidence on record.

6. The learned Counsel for the appellant submitted that, once execution is admitted by the defendants, then the burden shifts on them to prove that it was not a concluded contract. I do not agree with this, for the simple reason that, on the plain reading of the suit contract, it is evident that the parties thereto had agreed to execute the agreement to sell within three months from the execution of it and that too after settling the disputes/differences/rights between the executant and other co-sharers. Thus, taking into consideration all the circumstances on record, it leads me to hold that, there was no concluded contract between the parties.

7. Thus, in my view, the Appeal does not give rise to

any substantial question of law. The Appeal is dismissed.

8. In view of dismissal of the Appeal, Civil Application No. 139 of 2016 does not survive. The same is accordingly disposed of.

**(SANDEEP K. SHINDE, J)**