

DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 578 OF 2018
WITH
CIVIL APPLICATION NO. 1337 OF 2018
IN
SECOND APPEAL NO. 578 OF 2018**

Sadashiv Yeshwant Jadhav (since deceased)
through LRs

1A) Bharati Sadashiv Jadhav & ors. ..Appellants

vs.

Rangrao Laxman Nale (since deceased)
through LRs

1A) Hemlata Rangrao Nale & ors. ..Respondents

....

Shri Sandeep S. Koregave for appellants.

Shri Abhijit Desai i/b. Desai Legal for respondents.

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CORAM : M.S.KARNIK, J.

DATE : 19th JUNE, 2019

P.C. :

Heard learned Counsel for appellants and learned
Counsel for respondents.

2. The appellants are the original defendants. The respondents - original plaintiffs filed a suit for specific performance of the agreement of sale dated 16/4/2001.

3. It is the contention of learned Counsel for appellants that the said agreement of sale is a sham and bogus document and is executed by fraud and coercion. He would submit that at the relevant time appellant No.1 – original defendant was in need of money and therefore he requested respondent No.1 – original plaintiff for loan. According to him, an amount of Rs.1,00,000/- was paid as and by way of loan. Learned Counsel for appellants would further submit that taking advantage of the situation, plaintiff got executed the document which is purportedly an agreement of sale dated 16/4/2001 by obtaining some signatures on blank paper. Learned Counsel would submit that defendant denied execution of the document itself. He would submit that though defendant admitted to have signed this document, the contents of the said documents are not admitted. He has further submitted that attesting witnesses to the said agreement of sale are not examined. He would further submit that as agreement of sale is not registered and therefore the same could not have been the basis for maintaining suit for specific performance and the same should not have been read in

evidence. He would further submit that assuming without admitting that the document is executed, even in that case as the document records that a consideration of Rs.4,50,000/- has been paid to the appellant, then in that case in view of the provisions of Section 17 (1) (b) and (c), the document required compulsory registration under Registration Act, 1908.

4. Learned Counsel for appellants would submit that immediately on 17/4/2001 appellant No.1 – original defendant filed complaint against respondent No.1 – original plaintiff at the police station as regards execution of the document which was obtained from defendant by fraud and coercion. Learned Counsel for the appellants submitted that only on the basis of the evidence of the scribe viz. PW-2 to the document, the Courts below came to the conclusion that the contents of the document are proved. Learned Counsel would submit that it was essential for respondent No.1 – original plaintiff to have examined the witnesses to the document. He would further submit that the agreement of sale is not signed by the vendee and therefore

also such a document cannot be the basis to decree the suit for specific performance.

5. Per contra, learned Counsel for the respondents invited my attention to the findings recorded by the Courts below. He submitted that no interference is warranted in the light of the concurrent findings of fact recorded by the Courts below.

6. Heard learned Counsel for the parties.

7. I have gone through the findings recorded by the Courts below. I have also gone through the agreement of sale dated 16/4/2001. It has come in the evidence that appellant No. 1 – original defendant himself admitted to have signed the document, he, however, denied the contents. It is not in dispute that the appellant No. 1- original defendant was in need of money. He has further stated that he received a sum of Rs.1,00,000/-. His case however is that the document dated 16/4/2001 is obtained by fraud and coercion. Once the

appellant no.1 – original defendant admitted to have signed the document as a vendor, the suit for specific performance will not fail merely on the ground that the vendee has not signed the agreement of sale. This issue has been concluded by the Apex Court in the case of **Aloka Bose v/s. Parmatma Devi and others** reported in **(2009) 2 SCC 582**.

8. In so far as attesting witness No. 1 Dattatraya – son of deceased appellant No.1, who was witness to the agreement being an interested witness, the plaintiff has not examined him. In so far as other witness DW-3 Balasaheb Patil is a tenant of the appellant and therefore he also being an interested witness was not examined by the appellant. The appellant therefore examined the scribe Shri Pandurang Darekar, who is PW-2. The scribe has deposed as regards execution of the document and as to the factum of the contents of the document.

9. Even in so far as the witnesses of the defendants are concerned, DW-3 Balasaheb Patil has stated that he has put his signature on the said document as a witness.

10. It is pertinent to mention that DW-2 Rangrao Patil is a Police Patil. It is the case of the appellants that immediately upon execution of the document, the appellant no.1 along with two others viz. DW-2 and his son had gone to the police station. In such circumstances and as rightly held by the Courts below it is highly improbable that when the appellant no.1 is in the company of his son and the Police Patil, the respondent No.1 – original plaintiff would have obtained signature of the appellant no.1 on a blank paper. It is not as if the attesting witnesses have not signed the document and even when the document was executed the appellant, the attesting witnesses were very much present. In these circumstances, I agree with the Courts below that the defence of the appellants that the document has been obtained by force and coercion is untenable.

11. Even as regards the contention of learned Counsel for the appellants that the document required compulsory registration and therefore could not have been admitted in evidence, this submission can only be said to be rejected. Upon execution of the document the possession of the property was

not handed over and only consideration of Rs.4,50,000/- has been paid. The finding of the Courts below is that the respondent was always ready and willing to perform his part of the contract.

12. Having gone through the findings recorded by the Courts below, I do not find any reason to interfere with the findings recorded by the Courts below. Moreover, the Appellate Court has modified the decree of the trial Court. There being tenants in the suit property, the Appellate Court has directed to deliver symbolic possession of suit property as suit property is in the actual possession of tenants.

13. No substantial question of law is involved in the present Appeal, hence the Appeal is dismissed.

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

15. Interim relief in operation to continue for a period of eight weeks.

(M.S.KARNIK, J.)