

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 857 OF 2015

Shri. Kumar Mahadgonda Patil

.....Appellant

V/s.

Shri. Chandar Shiva Pande
and Ors.

....Respondents

* * * *

Mr. Utkarsh Desai i/by. Mr. Prashant Bhavke, Advocate for
the appellant.

Mr. Rahul Walve, Advocate for the respondents.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 31st January, 2019.

P.C. :

1. Heard the learned Counsel for the parties.
2. This Appeal is preferred by the defendant against whom a decree for specific performance was passed by the learned trial Court which was confirmed in Regular Civil Appeal No. 105 of 2014. The suit agreement is dated 21st September, 2011. The execution of the agreement is not in dispute. Both the Courts have rendered a finding of fact,

that the plaintiff was ready and willing to perform his part of the contract. The plaintiff had examined four witnesses to prove that he was ready and willing to perform his part of the contract.

3. The learned Counsel for the appellant has taken me through the suit agreement and relied on Clauses-5, 6 and 9 of it. In terms of Clause-5, the sale-deed was to be executed within four months after paying balance consideration. However, under Clause-9, the defendants had agreed to clear all encumbrances on the subject land. It appears from the evidence of the defendants that, they had cleared the encumbrances much before the execution of the suit agreement. In the given set of facts, both the Courts have held that refusal to execute the sale-deed in favour of the plaintiff by the defendant was not for any valid reason.

4. The learned Counsel appearing for the appellant submits that alienation of the suit land was subject to the provisions of Bombay Tenancy and Agricultural Lands Act and the sale-deed could not have been executed without first obtaining the consent/permission from the concerned

authorities. Neither the agreement stipulates this condition nor this point was raised before the First Appellate Court.

5. In view of this fact, the Appeal does not give rise to any substantial question of law. The Appeal is accordingly dismissed.

6. In view of dismissal of the Appeal, Civil Application No. 1798 of 2015 does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)