

the Courts below, sought time to take instructions from his client as to whether appellant is willing to accept a sum of Rs.3,00,000/- (Rupees Three Lakhs) which respondents voluntarily offered to pay to the appellant for the excess area of 200 sq.ft. which the appellant claimed to be in possession of respondents. This was without prejudice to the respondents rights and contentions.

3. On 18.6.2019 learned counsel appearing on behalf of the appellant sought further time for instructions and the matter therefore came to be adjourned to 2.7.2019. On 8.7.2019 again the matter was mentioned on behalf of the appellant, when the matter was adjourned to 15.7.2019 as a last chance.

4. On 15.7.2019 a different counsel appeared on behalf of the appellant and submitted that the appellant wants to change the earlier advocate on record. I had then indicated to her that the matter was fully heard and it was only adjourned for passing orders to enable the appellant to consider the proposal of the respondents. With a view to give one opportunity, the matter was again adjourned to 22.7.2019 as learned counsel stated that she was not aware of the previous development.

5. On 22.7.2019 the appellant was represented by another counsel who again sought time only by way of indulgence the matter was kept today. Today again the appellant appeared in person and stated that he wants time to engage another Advocate. It is in these circumstances and as the appellant is not willing to accept the proposal made by the respondents that I proceed to pass the following order.

6. The respondents are the original plaintiffs in Special Civil Suit No.211 of 2012 filed for specific performance of contract on the basis of agreement of sale dated 13.12.2010 executed by deceased Leelawati and appellant-defendant No.1 in favour of the respondents-original plaintiffs. The Trial Court as well as the First Appellate Court came to the conclusion that the present appellant and deceased Leelawati who is the mother of the present appellant agreed to sell the suit property for consideration of Rs.10,00,000/- (Rupees Ten Lakhs). It is the case of the respondents that Leelawati was in need of money. She owned a flat in a building 'Laxman Bhuvan' admeasuring 800 sq.ft. on first floor and remaining area is owned by appellant-original defendant No.1.

7. At the time of entering into agreement of sale an amount of Rs.4,00,000/- (Rupees Four Lakhs) was paid by the respondents. The said agreement is denied by the appellant. It is the case of the appellant that he only signed on the agreement but has not agreed to sell the suit flat to the respondents. It is further the case that though the agreement of sale was only for 800 sq.ft., excess area is in possession of the respondents.

8. The Courts below came to the conclusion that the respondents proved the execution of the agreement dated 13.12.2010. It is found that out of the total consideration of Rs.10,00,000/- (Rupees Ten Lakhs), the respondents paid an amount of Rs.4,00,000/- (Rupees Four Lakhs) on 16.11.2010 by cheque and further amount of Rs.1,00,000/- (Rupees One Lakh) on 13.12.2010 also by cheque. The balance amount of Rs.5,00,000/- (Rupees Five Lakhs) was deposited when the suit is filed.

9. I have gone through the findings recorded by the Courts below. The Courts below have come to the conclusion that the agreement of sale executed by the deceased Leelawati, the

mother of the appellant is binding on the appellant. Further I have gone through the findings of the Courts below where it is recorded that the respondents-plaintiffs are always ready and willing to perform their part of contract and that breach of the contract is committed by the appellant.

10. In this view of the matter, I see no reason to interfere with the concurrent finding of fact recorded by the Courts below decreeing the suit for special performance. The present Appeal does not involve any substantial question of law. The same is rejected.

11. Learned counsel for the respondents on instructions, would nonetheless submit that the respondents are still willing to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs) to the appellant. Learned counsel for the respondents states that the respondents will deposit this amount with the Trial Court within a period of four weeks from today. The appellant may apply to the Trial Court for withdrawal of this amount of Rs.3,00,000/- (Rupees Three Lakhs). If no such application is made by appellant within a period of eight weeks from the date of deposit, the Trial

Court to refund this amount to the respondents.

12. The Second Appeal is dismissed.

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

(M. S. KARNIK, J.)