

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Second Appeal No.390 of 2019
(Sau. Shevantidevi w/o Radhavallabh Mundada .vs. Chandanlal
Harishchandra Sabere and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. J.B. Kasat, Advocate for Appellant.
Mr. P.V. Navlani, Advocate for Respondent Nos. 1 & 2.

CORAM : Manish Pitale, J.
DATED : October 01, 2019.

The appellant is the original defendant who has filed this appeal challenging judgment and order dated 06.10.2018 passed by the District Judge-4, Amravati (appellate Court), whereby the judgment and order passed by the trial Court has been reversed and the appellate Court has granted relief to the respondents to the extent that they would be entitled for refund of earnest money.

2. In the present case, the parties entered into an agreement dated 10.01.2002 whereby the respondents agreed to purchase the suit property from the appellant for a consideration of Rs.6,25,000/-. The respondents paid amount of Rs.3,12,500/- on two dates in pursuance of the said agreement.

3. But, thereafter it was noticed that a 12 meters road was passing through the suit property cutting the suit property into two parts and that upon

acquiring knowledge about the same, there were exchange of notices and replies between the parties.

4. It was at this stage that the respondents filed suit before the trial Court seeking refund of earnest money from the appellant. The trial Court in the first instance dismissed the suit filed by the respondents on the basis that they were not entitled to such refund in the facts and circumstances of the case and the respondents had failed to prove that the appellant had suppressed the fact of right of way or that the suit property was located in green zone.

5. On an appeal filed by the respondents, the appellate Court reversed the findings given by the trial Court and found that both the parties who entered into the agreement had committed a mistake of fact and that even if it could not be said that the appellant had deliberately suppressed the right of way leading to a road of 12 meters running through the suit property, it could not be said that the appellant was entitled to forfeit the earnest money in terms of the agreement entered into between the parties. Reference was also made to the clause existing in the said agreement which specified that the appellant would be responsible for any encumbrances found on the subject property.

6. The learned counsel for the appellant submitted that the theory of mistake of fact propounded by the appellate Court was not sustainable and that even if it was to be presumed that both parties were unaware about the existence of right of way and the

road cutting through the suit property, nothing prevented the respondents from insisting upon culmination of the agreement and that the respondents had failed to take any steps in that direction, thereby justifying the claim of the appellant towards forfeiture of the earnest money.

7. A perusal of the reasons given by the appellate Court, although it is a reversing judgment, show that the reasoning adopted in the facts and circumstances of the present case, is appropriate and it is found that in view of the terms of the agreement and the fact that the existence of right of way resulting in a road cutting through the suit property could not be said to be deliberately suppressed by the appellant, at the same time it ought not to inure to the benefit of the appellant. In the facts and circumstances of the case, the appellate Court adopted the correct approach in ensuring that neither party suffer or unfairly gained because of the mistake of fact noticed by the appellate Court in the peculiar facts and circumstances of the present case.

8. In view of the above, this Court finds that no substantial question of law arises in the present appeal and accordingly it is dismissed.

JUDGE