

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.338 OF 2019

Khushal s/o Namdeorao Gedam,
Aged 72 years, R/o 1st Bus Stop,
Gopal Nagar, Nagpur,
District Nagpur. **APPELLANT**

...V E R S U S...

Maya w/o Yadavrao Rangary,
Aged 55 years, Occ: Housewife,
R/o PNo.73-A, Gajanan Dham,
Shankar Nagar, Khamla, Nagpur. **RESPONDENT**

Shri Vilas Dangre, Advocate for Appellant.
Shri N.V. Fulzele, Advocate for Respondent.

CORAM: **ROHIT B. DEO, J.**
DATE: **4th SEPTEMBER, 2019.**

ORAL JUDGMENT:

The appellant is original defendant in Regular Civil Suit 17 of 2009 brought by the respondent for declaration, permanent injunction and rectification of the sale deed dated 12.09.2001.

2] By judgment and decree dated 27.08.2014 the Joint Civil Judge (Junior Division) Hingna, District Nagpur decreed the

suit partly and the operative order reads thus:

1. *Suit is partly decreed with costs as under.*
2. *The defendant is directed to execute rectification (Correction) deed in the sale deed dt.12.09.2001 in favour of plaintiff by substituting description of plot no.34 in the sale deed with new plot no.34 (revised Plot no.49) as per revised plan atExh.73 within three months, from the date of this order, on the payment of development charges of Rs.20,000/- (Twenty thousand rupees) and price of excess area as per the market rate decided by ready reckoner issued by Government of Maharashtra for the year 2009 by the plaintiff.*
3. *Plaintiff to deposit development charges Rs.20,000/- and price of excess area as per ready reckoner within two months from the date of this order.*
4. *If defendant fail to execute rectification deed after depositing above amount within a stipulated period, then, the plaintiff is at liberty to get execute rectification deed from the court.*
5. *It is further directed that on execution of correction deed the defendant do deliver the possession of above property to the plaintiff.*
6. *Suit to the extent of reliefs of declaration and permanent injunction is dismissed.*
7. *Decree be drawn up accordingly.*

3] Dissatisfied, the appellant preferred Regular Civil Appeal 17 of 2015 which is dismissed by judgment and decree dated 15.09.2017 rendered by the Ad hoc District Judge-3,

Nagpur.

4] Being aggrieved by the concurrent judgments, the appellant – original defendant is in appeal under Section 100 of the Code of Civil Procedure.

5] The parties shall be referred by their status in the trial Court.

6] The plaintiff contends that by registered sale deed dated 12.09.2001 the defendant sold plot 34 admeasuring 1500 sq. ft. and the temporary construction thereon situated at Mouza Takali (Sukali) to the plaintiff and possession was delivered. The plaintiff contends that since the defendant attempted to disturb the possession she issued a letter dated 26.09.2008 to the defendant and in response the counsel Shri N.H. Deshmukh informed the plaintiff that in view of the change in the sanctioned plan the plaintiff's possession on the basis of the sale deed is illegal and called upon the plaintiff to correct the sale deed dated 12.09.2001. The plaintiff contends that thereafter the defendant fraudulently obtained revised sanctioned plan in which the suit plot is shown in "No Development Zone". The plaintiff further

contends that plot 34 which is sold to her is now new plot 34 (revised plot 49) in the revised layout plan.

7] The defendant contended that the old layout plan was changed by the Town Planning Authority and the suit plot is therefore, not in existence. The defendant contended that he is ready to give another plot to the plaintiff as per the revised sanctioned layout.

8] The trial Court recorded a finding, that in view of the revised layout plan, plot 34 which is the subject-matter of the sale deed is not in existence and therefore, held that the plaintiff is not entitled to declaration and permanent injunction. However, the trial Court answered the additional issues 2A and 3A in favour of the plaintiff and directed the defendant to execute deed of rectification by substituting the description of plot 34 in the sale deed with new plot 34 (revised plot 49) as per plan Exh.73 on payment of development charges.

9] The Appellate Court recorded a finding that the defendant obtained sanction to the revised layout fraudulently and that the plaintiff therefore, proved her entitlement to rectification

of the sale deed and possession of the new plot 34 (revised plot 49.

10] On the aspect of fraud, the findings of the first Appellate Court read thus:

6] *Point No. 1 : It is not disputed that defendant was owner of entire Khasara No. 36. Initially he arranged plots without getting sanction from Town Planning Authorities to sold Plot No. 34 area 1500 sq. ft. to the plaintiff by registered sale-deed dated 12.9.2001. Since then plaintiff was in possession and enjoyment of said plot. It is not disputed the plaintiff submitted layout of the entire Khasara No. 36 to the Town Planning Authority including the suit plot. The appellant has filed copy of layout plan prepared in the year 2001 before executing sale-deed of Plot No. 34 in favour of plaintiff. The sale-deed executed in favour of plaintiff is filed at Exh. 59. The description and the boundaries of suit plot given in the sale deed are identical with the layout plan. According to said plan the description of the suit plot in sale deed is correct.*

7] *The copy of the layout plan prepared by defendant and submitted to the Town Authority for sanction is filed by plaintiff at Exh. 68. The copy of layout plan sanctioned by the Town Planning Authority is filed at Exh. 66. If both these plans are compared with the layout plan prepared by defendant in the year 2001 it is crystal clear that the suit plot i.e. Plot No. 34 is shown by defendant in the area reserve for public utility, in the layout plan submitted to Town Planning Authority and authority has altered the numbers and allotted new numbers while sanctioning the plan. Except this change, the Town Planning authority has not made any change in the plan submitted by the defendant. This act of defendant show that the suit plot owned by plaintiff is shown in public utility area without*

authority. This act amounts to practicing fraud on plaintiff. Thus the defendant has got sanction the layout plan by practicing fraud. Hence I answer point No.1 in the affirmative.

11] This appeal was extensively argued on 27.08.2019. I was not inclined to entertain the appeal. However, since it was submitted by the learned counsel for the appellant that it was the original defendant who is directed to pay the development charges, and the charges are on the higher side, the following order was passed:

1. Prima facie, the impugned judgment is unexceptionable.

2. However, some submission is made by the learned counsel for the appellant that equity needs to be balanced in as much as, the amount which the trial Court has directed the original-defendant to pay towards development charges, is on the higher side.

3. The learned counsel for the appellant Shri K.K. Gour, counsel h/f Shri Y.B. Mandpe, states that possession of plot 48 which the trial Court has ordered the defendant to hand over to the plaintiff, shall be delivered to the plaintiff in 48 hours. The statement is accepted.

4. In the interregnum, call for record and proceedings.

5. The Registry shall ensure that the record and proceedings is received in three days.

6. Stand over to 04/09/2019 for further consideration.

12] A statement is made on behalf of the plaintiff that the possession of plot 49 is not delivered to the plaintiff. It is further brought to my notice that it is in fact the plaintiff who is directed to deposit the development charges of Rs.20,000/-. In this view of the matter, I have further heard the learned counsel and I am satisfied that this appeal does not involve any question of law much less substantial question of law.

13] It is an admitted position that the defendant executed sale deed of plot 34 in favour of the plaintiff. The finding of fact recorded that the defendant revised the layout fraudulently and in the revised layout the plot sold to the plaintiff was shown in “No Development Zone” is based on evidence on record and is unexceptionable. No fault can be found with the directions issued by the courts below that the sale deed be rectified and possession of the plot in the revised layout which corresponds to or co-relates to the plot sold to the plaintiff from the situational point of view, be delivered to the plaintiff. No question of law is involved much less substantial question of law and the appeal is therefore, dismissed.

14] The Executing Court is requested to finally dispose of

the execution as expeditiously as possible and in any event within two weeks from the date of this order.

JUDGE

NSN