

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

SECOND APPEAL NO.351/2019

Sonaji @ Dnyaneshwar Shivramji Radke & Ors.

..VS..

Gajanan S/o. Atmaram Radke & Anr.

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

Court's or Judge's orders

Shri Romill Jain, Advocate for the appellants

CORAM : V. M. DESHPANDE, J.

DATED : 29/07/2019

Heard Shri Romill Jain, learned counsel for the appellants.

2] This appeal is by original defendants. The suit was filed for specific performance of contract by the respondents. In a suit for specific performance of contract, filed by the respondents, the learned Extra Joint Civil Judge Senior Division, Amravati on 21/09/2016 granted decree for specific performance of contract in their favour. The said decree was taken up in Regular Civil Appeal No. 161/2016 by the present appellants. However, on 15/04/2019 the learned District Judge-4, Amravati dismissed the appeal and confirmed the judgment and decree passed by the trial Court.

3] The only submission that was made before this Court by the appellants was that it was the duty of the present respondents to prove the legal necessity. In that behalf, he relied on the decision of this Court

reported in **2017 (4)Mh.L.J. 590, Shrikant Trimbakrao Begade & Oth. .v/s. Natthu Maroti Shivarkar (dead) through L.Rs. Jyoti Wd/o. Natthu Shivarkar and Oth.**

4] Admittedly, respondent No.1 Gajanan S/o. Atmaram Radke is the nephew of appellant No.1/defendant No.1 Sonaji alias Dnyaneshwar Shivramji Radke. The suit properties are field survey No. 1/1 and survey No. 1/2 admeasuring 0.41 R. each situated at Katamla, Taq. and Distt. Amravati. It is also not in dispute that on 22/12/2010, the appellant No.1 executed agreement of sale in favour of respondents/ plaintiffs. The said is at Exh. 38. By the said agreement appellant No.1 agreed to sale these suit fields for total consideration of Rs.9,00,000/- and Rs.2,00,000/- were obtained as an earnest. Though the respondents were ready and willing to perform their part of contract the defendant No.1, the executant of the document was not, therefore, suit was filed. In a suit, a specific defence was taken by the appellants that Exh. 38 is a nominal document and at no point of time it was agreed by the appellant No.1, to transfer the property and the said document was given only by way of security for the loan obtained by the appellant No.1 from the original plaintiffs.

5] Issues were struck on the rival pleadings. For decision two issues are important namely issue No.4 and issue No.5. Both the Courts below concurrently recorded

a finding of fact that Exh. 38 was not a nominal document, however, the appellant No.1 being a Karta of the family for legal necessity executed the said document. Both the courts below also found favour with the original plaintiffs about their readiness and willingness.

6] In my view, when the appellants themselves have taken a specific plea that the appellant No.1, being karta of the joint family and for legal necessity, executed the document in question, the burden cannot be shifted about the same on the appellants about the legal necessity, since it will be an admitted position on record. Further the learned counsel for the appellants made me available the copy of the Exh. 38. It is not only signed by the appellant No.1 as a executant but appellant No. 3 Vijay acts as a witness. All these facts were properly considered by both the Courts below. There is no substantial question of law involved in the present appeal.

Hence, dismissed. No costs.

JUDGE