

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.437 OF 2018
ALONG WITH
CIVIL APPLICATION NO.1005 OF 2018**

Pandurang Shankar Devmare Mali
through his CA Raju P. Devmare .. Appellant

Vs.

Balu Tukaram Gajge .. Respondent

...

Mr. Pramod N. Patil with Ms. Komal Mestry for the Appellant.

Mr. S.P. Rajepandhare for the Respondent.

...

CORAM: SMT. BHARATI DANGRE, J.

DATED : 25th FEBRUARY, 2020.

P.C:-

1. The Second Appeal, according to the learned counsel for the Appellant rests on two substantial questions of law viz. (a) the courts below have failed to consider that the readiness and willingness on the part of the Plaintiff was not established by

adducing any positive evidence to that effect and (b) the agreement which is sought to be relied upon was not stamped and, therefore, was not admissible.

2. With the assistance of the learned counsel for the Appellant and the Respondent, I have perused the judgment passed by the Civil Judge, Junior Division, Pandharpur in Regular Civil Suit No.511 of 1999 dated 18/01/2011 as well as the judgment in Appeal passed by the District Judge-1, Pandharpur, District Solapur in Regular Civil Appeal No.74 of 2011.

3. The subject property is a non-agricultural plot admeasuring 256.50 sq. meters located at plot bearing Survey No.39/7B/2B which is owned by the present Appellant.

4. The case of the Plaintiff as set out in the first court was there was an Agreement to Sell executed between the parties in respect of the said property and the earnest money in the sum of Rs.20,000/- was also paid to the Defendant who was the owner of the property. It was agreed that an amount of Rs.62,350/- would be paid within 11 months on a Sale Deed being executed by the Defendant in favour of the Plaintiff.

5. On failure to abide by the terms of the Agreement to Sale and since there was a hesitancy on the part of the Defendant in

executing the Sale Deed, the Plaintiff sent a notice through his advocate on 28/10/1999 by registered post with acknowledgment due and expressed his willingness to pay the remaining amount in terms of the Agreement to Sale. The specific case of the Appellant is that he was ready and willing to perform his part of the Agreement whereas there was no response from the Defendant to execute the Sale Deed and, therefore, he sought specific performance of the contract.

6. The Civil Judge, Junior Division, on consideration of the written statement filed by the Defendant where the onus was attempted to be shifted on the Plaintiff for not executing the Sale Deed and a claim was set out that he has suffered a loss of Rs.25,000/-, on framing four issues, decided the suit in favour of the Plaintiff and directed specific performance of the Agreement subject to payment of Rs.62,350/- and execution of Sale Deed within two months. The Court had categorically recorded a finding in respect of the readiness and willingness on the part of the Plaintiff by specifically returning a finding that the fact that the notice was sent within a period of 15 days of expiry of 11 months, the period within which the Sale Deed was to be executed in terms of the Agreement to Sale and the fact that the Plaintiff had purchased another piece of land bearing Plot No.29 from the Defendant showed his readiness to pay the remaining amount in terms of the Agreement to Sale as a consideration

towards the property in question.

7. Reliance on the notice of the Defendants dated 08/11/1999 was recorded to be an afterthought and refutation to the notice of the Plaintiff. The said suit was decreed.

8. The Appellate Court examined the judgment in detail and refused to interfere and rather concurred with the findings contained therein. Apart from this, the Appellate Court has also, in detail, dealt with the issue of non payment of stamp duty and categorically held that since this point was not raised at the time of the execution of the document or even before the trial court, it cannot be entertained at the stage of appeal. Concurring with the other findings in respect of Issue Nos.1, 2 and 3, the Appellate Court dismissed the appeal.

9. The substantial question of law which has been averred by the Appellant in the Memo of Appeal, on consideration of the findings recorded by both the courts cannot amount to a substantial question of law as falling within the purview of Section 100 of the Code of Civil Procedure. The findings of fact returned by both the courts below are based on the evidence placed before it and no infirmity or illegality can be found on it. In the absence of any substantial question of law arising out of the said appeal, the second appeal deserves to be dismissed and is

accordingly dismissed by confirming the judgments of the courts below.

10. No order as to costs.

[SMT. BHARATI DANGRE, J.]