

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 491 OF 1995
ALONGWITH**

SECOND APPEAL NO. 492 OF 1995

Shri Bhagatsingh Khushalsingh Pardeshi ... Appellant

V/s.

Smt. Juganbai Nainusingh Pardeshi & Anr. ... Respondents

...

Mr. Pradeep J. Thorat a/w. Ms. Aditi Naikare, for the Appellant.

None for the Respondents.

CORAM: SMT. SADHANA S. JADHAV, J.

DATED : 21st JANUARY, 2020.

ORAL JUDGMENT:-

1. The appellant herein impugns the judgment and order dated 15th April, 1995 passed by the District Judge, Nashik thereby, upholding the judgment and decree dated 4th September, 1990 passed by the Civil Judge, Junior Division, Chandwad. The substantive question of law as formulated by

the appellant is as follows:-

“(a) Whether the Courts below erred in Decreeing Suit for possession of the Suit land, when the Suit property is in possession of the Appellant-Defendant on the basis of Written Agreement of Sale.”

2. The appellant herein happens to be the plaintiff and son-in-law of the original defendant, Nainusingh Pardeshi. The appellant herein had filed Regular Civil Suit No. 55 of 1979 seeking the relief of specific performance. Nainusingh Pardeshi had filed Regular Civil Suit No. 55 of 1981 against the plaintiff. In Regular Civil Suit No. 56 of 1979 was filed for seeking recovery of possession of land admeasuring 25 Ares, which was part and parcel of the land admeasuring 6 Ares in respect of which, plaintiff had filed suit for specific performance. The plaintiff in Regular Civil Suit No. 55 of 1979 had filed the suit on the basis of agreement dated 10th September, 1974 executed between him and the defendant, wherein the defendant had agreed to sell 64 Ares in favour of his son-in-law for a consideration of Rs.10,001/- According to plaintiff, he had paid

earnest money to the tune of Rs.1701/- towards purchase of the said land.

3. It was the case of the plaintiff that in fact, an amount of Rs.1700/- was given to the defendant to pay electricity bill. They denied execution of the agreement. The agreement to sale is at Exhibit-44. The contents of the agreement of sale would show that the possession was not handed over to the defendant as there was implementation of block development scheme. It appears that the learned Trial Court had exercised the powers under Section 73 of the Indian Evidence Act and had recorded the findings that there is variance in the ink in which, the recitals are mentioned and the signature of Nainusingh. It was pleaded by the plaintiff that he had obtained possession of the suit land at the time of execution of agreement of sale. But there was no separate receipt of possession. There is inconsistency in his deposition as far as the contents of the agreement of sale is concerned. It is observed by both the Courts that the area of block No.30 is not mentioned properly. The evidence of plaintiff was full of inconsistencies in R.C.S. No.55/1979.

4. That during the pendency of the appeal, Nainusingh was incapacitated therefore, Lilabai who happens to be his only daughter and wife of defendant was examined and it was her specific contention that the appellant had fraudulently taken undue advantage of signature of Nainusingh. It was also brought on record that in the year 1979, the relations between parties were strained and Nainusingh had to file the application and had taken custody of his daughter under Section 97 of the Code of Civil Procedure. The said fact was admitted by the appellant.

5. It is pertinent to note that suit was filed in April-1979 i.e. soon after custody of Lilabai was taken by her father. Both the Courts have arrived at conclusion and recorded the findings to the effect that there was no valid contract between the parties and that plaintiff could not prove the contents of the document at Exhibit-44 and that he had taken undue advantage of the blank paper signed by the defendant. It was also held that the plaintiff could not take defence of Section 53(a) of the Transfer of Property Act. The Appellate Court had upheld the findings recorded by the First Court on the ground that very

document on the basis of which, the suit was instituted was not proved by the plaintiff in accordance with law and therefore, the appeal was dismissed.

6. Regular Civil Suit No. 56 of 1981 was filed by Nainusingh i.e. father-in-law of Bhagatsingh who was plaintiff in Regular Civil Suit No. 55 of 1979. By the said suit, the plaintiff had sought recovery of possession to the extent of 24 Ares out of 64 Ares which was subject matter of agreement of sale. It is at Exhibit-44. The very fact that the document at Exhibit-44 was not proved in accordance with law and it was specifically mentioned that the possession was not handed over by the said agreement. The possession of the defendant in R.C.S. No.56/1979 was held to be illegal. R.C.S. No.56 of 1979 was decreed with cost. In view of the above discussion, the substantive question of law as formulated by the appellant deserves to be answered in the negative. The record would clearly indicate that written agreement of sale on the basis of which, suit was instituted or the possession was purportedly taken by the plaintiff was not proved in accordance with law. There is no question of either recovery of possession or specific

performance to be executed between the parties. In view of above, both Second Appeals stand dismissed.

(SMT. SADHANA S. JADHAV, J.)