

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

**SECOND APPEAL NO.166 OF 2020
WITH
CIVIL APPLICATION NO.932 OF 2019**

Riyaz Illahi Dalal & Ors. Appellants

Vs.

Mr. Anand Dipak Goyal Respondent

Mr. Rohan P. Surve for Appellants.
Mr. Rohan Barge for Respondent

Coram : NITIN W. SAMBRE, J.

Date : 22nd January, 2020

P.C.:

1. Exhibit 33, agreement for specific performance dated 17th October, 2012 based on the suit of respondent-plaintiff came to be decreed, which decree was confirmed in the First Appeal.

2. While questioning a decree for specific performance, the learned counsel for the appellants-original defendants would urge that the reverse agreement came to be executed on a very day i.e. on 17th

October, 2013. According to him, the date on which both these agreements i.e. Exhibit 33 and other documents executed, the market value of property was around Rs.30.00 Lakhs, whereas in the agreement Exhibit 33, the same is shown to be Rs.3.00 Lakhs.

3. The contention of the learned counsel for the appellants that the aforesaid factual matrix demonstrates that it was a loan transaction and that being so, Exhibit 33 should have been read to mean a symbolic agreement of sale. As such, claim for specific performance pursuant to Exhibit 33 of the Specific Relief Act is illegally decreed.

4. Aforesaid question of law is sought to be agitated on the backdrop of submissions referred above.

5. Apart from the concurrent findings recorded against the appellants granting specific performance based on Exhibit 33, a registered agreement of sale of the suit property, which was rightly so accepted by both the Courts below in evidence pursuant to the

provisions of Section 17 of Registration Act. This Court cannot be oblivious to the failure on the part of the appellants- original defendants to prove reverse agreement, which claimed to have been executed on 17th October, 2013. Neither such document was produced nor any oral or documentary evidence in support thereof was brought to the notice of both the Courts below. It was always open for the appellants to take recourse to the provisions of Order 41, Rules 23 and 23A of C.P.C. seeking remand, based on such reverse agreement, which was not produced may be for a genuine reason. Under Order 41, Rule 27, it was open for the appellants to produce such documents which was not produced before the trial Court.

6. Admittedly no such steps are taken by the appellants to establish their claim.

7. Second Appeal is devoid of merits. As such stands dismissed.

8. As a consequence of dismissal of the Second Appeal, pending application also stands disposed of.

(NITIN W. SAMBRE, J.)