

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

SECOND APPEAL NO. 01 OF 2020

Ranjana Purushottam Kadaskar.

Vs.

Bandu s/o Pralhad Bhute.

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

Court's or Judge's orders

Shri. S. T. Dhurwey, Advocate for appellant.

CORAM : AVINASH G. GHAROTE, J.

DATE : FEBRUARY 05, 2020.

The present second appeal takes exception to the judgment and decree of the First Appellate Court dated 07.02.2019, passed in Regular Civil Appeal No.571 of 2016, whereby the judgment and decree dated 29.06.2016 passed by the 5th Joint Civil Junior Division, Nagpur in Regular Civil Suit No.2821 of 2012 has been set aside and the suit as filed by the plaintiff for specific performance has been dismissed.

2. The plaintiff claiming an agreement of sale in her favour, in respect of the suit property dated 15.10.2007, had filed a suit for specific performance, in respect of the suit property. It was the contention of the plaintiff, that on 15.10.2007 the defendant for the consideration of Rs. 1,00,000/- had agreed to sale the suit property. The amount of Rs.1,00,000/- is claimed to have paid to the defendant on the date of agreement of sale on itself. The sale deed was agreed to be registered, whenever the process of registration

would commence. The possession is also claimed to have been delivered to the plaintiff. The document, however which has been exhibited in the cross-examination of the plaintiff at Exh.26 reflects, that it is not styled as an agreement of sale but as a possession letter and is couched in a language of a sale.

3. The defendant denied the agreement, he submitted that since the plaintiffs husband was doing business of money lending and the defendant was in need of loan the said document was executed. The learned Trial Court after perusal of the entire evidence documentary as well as oral, came to the conclusion that the document at Exh.26 was an unregistered one, the same was affected, by the proviso to Section 49 of the Registration Act, however a suit for specific performance based upon it was not barred. The learned Trial Court, however considering the document at Exh.30 which was exhibited in the cross-examination of the plaintiff, upon a contemporaneous examination of the same came to the conclusion that the transaction as raised by Exh.26 the Kabja-Patra and the agreement of sale at Exh.30, demonstrated that the same was in the nature of a loan. It further recorded, that at the time of execution of Exh.30, it was the defendant who was in possession of the suit property. The Trial Court thereafter holding that the agreement Exh.26 was proved, however refused to grant the relief the specific performance granted the alternative claim of refund of Rs.1,00,000/-. The Appellate Court by the impugned judgment, has allowed the

appeal, set aside the judgment of the Trial Court and dismissed the suit. The Appellate Court relied upon Exh.30 to hold that the conjoint reading of Exh.30 along with Exh.26 demonstrates that the transaction between the plaintiffs, was a loan transaction, and affirmed the decision of the Trial Court.

4. I have heard Mr. Dhurwey, learned counsel for the appellant and perused the record with his assistance. By an order dated 20.01.2020, he was directed to place the copies of the Kabja – Patra dated 15.10.2007 – Exh. 26 and the agreement of sale dated 27.09.2010.

5. A perusal and comparison of both the documents, clearly demonstrates that there cannot any doubt that the transaction as evinced by the Kabja – Patra dated 15.10.2007, in light of the last para of the agreement of sale dated 27.09.2010, was in the nature of a loan. The judgment of the Appellate Court, therefore cannot be found fault with. There is no substantial question of law raised, as a result of which the appeal fails and is dismissed.

JUDGE