

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

SECOND APPEAL NO.122 OF 2020

[Sheela d/o Santoshrao Meghe .vs. Ravindra s/o Krishnarao Chinchmalatpure and one]

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

Court's or Judge's orders

CORAM : MADHAV J. JAMDAR, J.

DATED : 11.03.2020.

Heard Shri S.A. Chaudhari, learned advocate for the appellant. He submitted that the impugned judgments of both the courts are perverse, as evidence on record is not taken into consideration and that as the respondent no.2 was in urgent need of money, the time was the essence of the contract and, therefore, the sale deed was to be executed within two months and the same was not done. For appreciating the substantial questions raised by the learned advocate for the appellant, it is necessary to see the factual position on record.

The respondent no.1 and the respondent no.2, who are the plaintiff and defendant no.1 respectively in Special Civil Suit No.483 of 2003 were working in same department and knowing each other. The respondent no.2 was the original owner of the suit property and he agreed to sell the suit property to the respondent no.1 and it was decided that the suit property would be sold for a consideration of Rs.3,60,000/-. The said agreement was oral agreement. The respondent no.1 paid part consideration amount of Rs.20,000/- to the respondent no.2 on or about

19.12.2002. It is the case of the respondent no.1 i.e. plaintiff that the respondent no.2 i.e. defendant no.1 acknowledged the receipt of the said part payment and issued valid receipt thereof. It is further the case of the respondent no.1 that the respondent no.2 had agreed to receive the balance consideration amount after the mutation of the suit property in his name. However, the respondent no.2 avoided to accept the balance consideration of Rs.3,40,000/- from the respondent no.1 on one pretext or other and, therefore, the suit for specific performance was filed on 1.3.2003. It appears that during the pendency of the suit, the respondent no.2 i.e. defendant no.1 sold the suit property to the present appellant i.e. defendant no.2 vide registered sale deed dated 29.9.2003.

With the assistance of the advocate Shri S.A. Chaudhari, I have perused the judgment of the learned trial court as well as the learned lower appellate court. Both the courts have concurrently found that the respondent no.1 proved that the respondent no.2 has orally agreed to sell the suit property to him for a consideration of Rs.3,60,000/- and for that purpose had accepted earnest amount of Rs.20,000/- on 19.12.2002. The courts below have further concurrently held that the respondent no.1 proved that balance amount was to be paid to the respondent no.2, after the mutation of the suit property in the name of the respondent no.2 and that the respondent no.1 was always ready and willing to perform his part of contract and that the respondent no.2 failed to perform his part of contract. The courts below have further concurrently held that the transaction dated 29.9.2003 executed by the respondent

no.2 in favour of the appellant is not binding on the respondent no.1.

Although Mr. S.A. Chaudhari, learned counsel for the appellant strenuously argued that the various findings recorded are perverse, he failed to point out which part of the evidence is not taken into consideration by the lower courts and which finding is contrary to the evidence on record. His further submission that the time is essence of the contract, as the respondent no.2 was in urgent need of money, is also found to be without any basis, as there is no evidence on record in that behalf. In this behalf it is significant to note that the balance amount was to be paid after mutation of the suit property in the name of the respondent no.2 and nothing is pointed out of the compliance of the same by the respondent no.2. It is also significant to note that the decree of the learned trial court and the finding recorded by the learned trial court were not challenged by the respondent no.2 i.e. original owner by filing appeal in the lower Appellate court as well as in the present appeal. The present appeal has been filed by the subsequent purchaser. It is not even the case of the subsequent purchaser that he is a bona-fide purchaser without notice of the transaction between the respondent no.1 and the respondent no.2. Therefore, as there is no substantial question of law involved in the present second appeal, the appeal is dismissed.

JUDGE