

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.240 OF 2017

DILIP BHAGWAN CHAUDHARI
VERSUS
MANOJ BRAJMOHAN MAHESHWARI AND ORS

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Mr. S. S. Bora, Advocate for the appellant.
Mr. D. M. Pingle, Advocate for respondent No.3 (Absent).

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20.08.2021

ORDER :-

. Present appeal has been filed by the original plaintiff challenging the concurrent judgment and decree passed by the Courts below.

2. Present appellant – original plaintiff filed Regular Civil Suit No.49 of 2012 before the learned Civil Judge Senior Division, Shahada, Dist. Nandurbar for specific performance of the contract and perpetual injunction. The learned Trial Judge held that the plaintiff has failed to prove that the document, on which the plaintiff is relying, is agreement to sell. He failed to prove that the defendant delivered the possession of the suit plot to him on the date of the agreement and, therefore, relief of specific performance cannot be granted. The suit came to be dismissed and the said judgment and decree was challenged by the plaintiff in Civil Appeal No.41 of 2012 before the learned Adhoc District Judge-1,

Shahada, Dist. Nandurbar. The first Appellate Court has dismissed the appeal on 20.02.2017. Hence, this second appeal.

3. Heard learned Advocate Mr. S. S. Bora for the appellant. Learned Advocate respondent No.3 is absent. In order to cut short, it can be said that learned Advocate for the appellant has made submissions in support of his contention.

4. At the outset, it is to be noted that both the Courts below, after assessing the facts on record and interpreting the document, which has been produced by the plaintiff held that the said document is not an agreement to sell. Unless it is now shown that the said finding is perverse, it may not give rise to admission of the second appeal by framing substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure. Interesting point to be noted is that the defendant had not resisted the claim of the plaintiff by filing written statement, however, that does not excuse the plaintiff from proving his claim by preponderance of probabilities. The Courts below were not under obligation to decree the suit or allow the appeal merely because the contentions of the plaintiff were not challenged by the defendant. The plaintiff contended that he as well as the defendant are from Madhya Pradesh. Defendant is the owner of non agricultural plot Gut No.42/1/A, Plot No.24 admeasuring 150 Sqare meters situated in village Kheddigar,

Tq. Shahada. Defendant was in need of money and, therefore, decided to sell the suit land in the meeting with the plaintiff. The consideration was agreed at Rs.4,41,000/-. Plaintiff says that an agreement was entered into on a stamp paper on 15.10.2011. He paid entire consideration to the defendant on that day and defendant handed over the possession of the suit land to the plaintiff. Defendant agreed to execute sale-deed in favour of plaintiff as per his convenience, however, thereafter, in December, 2011 when plaintiff asked defendant to register the sale-deed, he avoided. Hence, the suit for specific relief.

5. The agreement, which was produced before the Courts below, has been given Exhibit-18. Photocopy of the same has been made available to this Court though the title says *Sauda Pavti* i.e. agreement to sell. If we consider the contents thereof, then it can be seen that it was executed at Madhya Pradesh. It is in Hindi language. That means, on the date of execution of this document, they had not come to village Kheddigar. The question then remains as to how the possession would have been given by the defendant to the plaintiff. Further, there is absolutely no explanation by the plaintiff that when he had allegedly paid entire amount of consideration on the date of that agreement, then why the sale-deed itself was not executed by coming down to village Kheddigar or Shahada. Why only the act of registration of the sale-deed was postponed. Further, the detailed description of the suit plot is not mentioned in the said

agreement Exhibit-18. It has also come on record that stamp paper of the year 2009 was utilized to execute the agreement and the date of agreement is 16.10.2011. But then the Mutation Entry No.1062, which is produced on record, states that on the basis of sale-deed dated 02.08.2011 in favour of defendant by one Arunabai Sitaram Sonani, the said mutation entry had been taken on record on 22.08.2011. So, if the stamp paper was of the year 2009, how it could be utilized for the agreement to sell in the year 2011, is a question. Further, how the amount of Rs.4,41,000/- was paid by the plaintiff to the defendant is also not clarified by the plaintiff and further, if we go by the contention of the plaintiff that on the date of the agreement to sell he was also put in possession, then it becomes a compulsorily registerable document. Still, as per his own contention, when the plaintiff paid the entire amount of compensation, got the document, yet without giving any reason he contends that only agreement to sell was executed. The case of the plaintiff, therefore, becomes doubtful. Both the Courts below were right in refusing the discretionary relief. No substantial question of law as contemplated under Section 100 of the Code of Civil Procedure is arising in this case. Second appeal, therefore, stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

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