

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 SECOND APPEAL NO.389 OF 2017
WITH
CIVIL APPLICATION NO.7018 OF 2017

RAJENDRA TUKARAM AHIRRAO
VERSUS
RAVINDRA PUNDLIK AAHIRE

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Mr. P.V. Barde, Advocate for the appellant
Mr. R.D. Bhalerao, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 22nd OCTOBER, 2021

ORDER :

1 Present appeal has been filed by the original plaintiff challenging the concurrent Judgment and findings by the Courts below. He had filed Regular Civil Suit No.205/2012 before Civil Judge Senior Division, Dhule for specific performance of the contract and in the alternative for compensation of Rs.2,00,000/- and refund of earnest amount. The said suit came to be dismissed on 09.04.2013. He preferred Regular Civil Appeal No.60/2013. It was dismissed by learned Adhoc District Judge-1, Dhule on 17.06.2016.

Hence, this Second Appeal.

2 Heard learned Advocate Mr. P.V. Barde for the appellant and learned Advocate Mr. R.D. Bhalerao for the sole respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 At the outset, it is to be noted that the plaintiff had come with a case that defendant had agreed to sell him the suit property for a consideration of Rs.24,000/- and he paid earnest amount of Rs.4,051/-. The said agreement was entered into on 05.12.2005. Defendant denied the execution of the said document. Both the Courts below have held that plaintiff has failed to prove that the said agreement was executed. The agreement has been produced at Exh.30 and it appears that it has been tentatively exhibited. If we peruse the said Exh.30, then the observations made by both the Courts below appear to be correct. The said document is typewritten, not on a full scape page but on a small chit. The contents are adjusted as per the convenience and there is no continuity of the space. Further, it contains a statement that the possession of the property has been given on that day. When the said agreement was executed on 05.12.2005, that is, after the amendment to Section 53-A of the Transfer of Property Act

as well as Section 17 of the Registration Act in 2001, then it should have been on sufficiently stamped paper and the said document ought to have been registered. In absence of the same, no evidentiary value can be given to that document. There are so many surrounding circumstances or suspicious circumstances around this document, which plaintiff failed to remove. Further, the plaintiff in his evidence has admitted that the possession has not been handed over to him, though recital to that effect is contained in agreement Exh.30. Further terms, if any, as to when the remaining amount would be given and when the sale deed would be executed is not mentioned at all in the said document. A same person cannot enter into such incomplete agreement.

4 Though the plaintiff has tried to support his evidence by examining witnesses; yet, their testimony is unbelievable. The scribe has not been examined for the reasons best known to the plaintiff and, therefore, the learned Courts below were justified in arriving at a conclusion that the plaintiff has failed to prove the agreement. There is no question of going into the aspect of readiness and willingness on the part of the plaintiff to execute the sale deed. The suit was rightly dismissed, so also, the appeal. No substantial question of law, as contemplated under Section 100 of the Code of Civil Procedure, is arising in this case, requiring admission of the Second

Appeal. It deserves to be dismissed at the threshold. Accordingly, it is dismissed. Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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