

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.724 OF 2014
WITH
CIVIL APPLICATION NO. 12767 OF 2014**

Janu s/o Bhau Limbkar

**= APPELLANT
(orig.Defendant)**

VERSUS

Sarjerao Vithalrao Bhoite

**= RESPONDENT
(Orig.Plaintiff)**

Mr.VB Anjanwatikar,Advocate for Appellant;

Mr.KR and SK Doke,Advocates for Respondent.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 23rd August, 2021.

PER COURT :-

1. Present appeal has been filed by original defendant to challenge concurrent judgment and decree passed by the lower Courts. Present respondent-original plaintiff had filed Special Civil Suit No.9/2005 for specific performance of contract. The said suit came to be partly decreed by learned 3rd Joint Civil Judge, Senior Division, Osmanabad on 27.8.2009. The relief of specific performance was rejected, however, the defendant was directed to pay earnest amount of Rs.1,00,000/- with interest @ 12 % per annum from the date of suit till realization of the entire amount. The

(2)

said judgment and decree was challenged by the present appellant-original defendant before the District Judge-1, Bhoom by filing Regular Civil Appeal No.452/2014 (Old RCA No.214/2009). The said appeal came to be dismissed on 29.10.2014. Hence, this Second Appeal.

2. Heard learned Advocates appearing for the respective parties. In order to cut short it can be stated that both of them have made submissions in support of their respective contentions.

3. It has been vehemently submitted on behalf of the appellant that both the Courts below have not considered the evidence and the law points involved properly. The defendant had challenged the execution of the agreement itself. He had totally denied that he had gone to house of the plaintiff in village Lanjeshwar along with witnesses where the agreement to sell was executed. He has also denied that the consideration amount was fixed at Rs.4,00,000/- and he accepted the amount of Rs.1,00,000/- at the time of execution

(3)

of the said agreement to sell in presence of the witnesses. He is old aged illiterate person and taking disadvantage of the said fact, the plaintiff, with sole intention to get land of the defendant, has prepared false and fabricated document. Both the Courts below have unnecessarily believed in the testimonies of the plaintiff and the attesting witnesses in order to come to a conclusion that the amount was paid. Substantial questions of law are arising in this case, requiring admission of the Second Appeal.

4. Per contra, learned Advocate appearing for the respondent, supported the reasons given by both the Courts below and submitted that, except his own statement on oath, the defendant has not adduced any other evidence to disprove the evidence that was led by the plaintiff. In fact, the learned Trial Judge has refused the relief of specific performance and taking into consideration the evidence of the defendant that he has laid pipeline as well as erected the house in the suit land, the discretion has been exercised and only relief of refund of earnest amount together with

(4)

interest has been ordered. No substantial questions of law are arising in this case.

5. At the outset, it is to be noted that this Court, being Second Appellate Court, cannot go much deeper into the facts of the case unless it is shown that the findings, on the facts of both the courts below, are perverse. Except denial, there is nothing in the written statement of the defendant and he has not taken any special defence as such. It is also to be noted that both the parties are residents of different villages. The plaintiff had examined himself and the attesting witness to the document and then it has been held by the Trial Court that the agreement to sell (*Issar Pavati*) Exhibit-39, has been proved. The defendant, as aforesaid, except denial, has not stated anything else in his examination-in-chief. When he was coming with a case that the document is falsely prepared, then steps ought to have been taken to prove its falsity. As regards the thumb mark on the agreement to sell (Exh. 39) is concerned, the attesting witness has stated that it was impressed upon the defendant in his presence.

(5)

There was no reason for the attesting witness to speak against the defendant and no such circumstance has been brought on record. The cross-examination of the witnesses is only full of suggestions, which they have denied. Under such circumstance, when both the Courts below have considered the said evidence and had come to a conclusion that the agreement has been proved, further consequences would follow.

6. Now, as regards the relief of specific performance of contract is concerned, definitely, Section 20 of the Specific Reliefs Act gives a discretion to the Trial Court and taking into consideration the fact that in spite of agreement to sell in his favour, the plaintiff has not resisted the defendant from laying down the pipeline in the suit land and constructing the house in the same. After construction of the house, the defendant is residing there with his family members. Therefore, the discretion has also been properly and judiciously exercised by the learned Trial Judge while rejecting the relief of specific performance.

7. When it was proved that at the time of execution of the agreement to sell, the amount of Rs.1,00,000/- was given as earnest amount, then definitely the plaintiff should get it refunded and that too with interest. The first Appellate court has also considered the rate of interest that is granted by the learned Trial Judge and held that it has been correctly granted. Under such circumstance, there is absolutely no necessity to interfere as no substantial questions of law, as contemplated under Section 100 of CPC, are arising . The Second Appeal stands dismissed. Pending Civil application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

LATER ON :

. The learned Advocate appearing for the appellant after pronouncement of the order, seeks continuation of the interim relief granted by this Court. It appears that interim relief was granted by this Court by order dated 22.12.2014 and it was up to the returnable date of the notice i.e. 19.1.2015. Thereafter, it was continued till 13.2.2015 and again on that day, it was continued till 27.2.2015. Further, it appears that when the

(7)

matter was on Board on 27.2.2015, on the request of learned Advocate for the applicant, it was adjourned to 27.3.2015, however, thereafter learned Advocate for the appellant had not taken the circulation of the matter and has not got it extended till today. Under such circumstance, though he submits that his client may approach the Hon'ble Supreme Court, since the interim relief had already expired in the year 2015, it cannot be continued. Hence, oral request is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV