

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 20 OF 2021  
WITH  
CIVIL APPLICATION NO. 2752 OF 2018  
IN  
FIRST APPEAL NO. 20 OF 2021**

Vimladevi Purshottam Sarwagi .. Appellant  
Vs.  
Shirin Taherali .. Respondent

.....

Mr. Venkatesh Dhond, Senior Counsel a/w Mr. Nishant Sasidharan,  
Mr. Darshan Mehta and Ms. Shruti Dalal i/b Dhruve Liladhar & Co.  
for the appellant  
None for the respondent

**CORAM : PRITHVIRAJ K. CHAVAN, J.**

**RESERVED ON : 15<sup>th</sup> JANUARY, 2021  
PRONOUNCED ON : 28<sup>th</sup> JANUARY, 2021**

**P. C.**

1. Heard the learned Counsel for the appellant – original plaintiff for some time.
2. A suit for specific performance of Agreement of Sale was filed by the appellant against the respondent – defendant in respect of open plot, being plot no.34, admeasuring 344.44 sq. meters i.e. 50 x 72 sq.fts., bearing survey No.149(part), plot no.1(part) and plot no.2 (part) and Sheet No.77 (part) of Malad (hereinafter referred to as “suit plot” for short). The plot is situated partly in village Pahadi and partly in village Malad.
3. The facts in short are summarized as follows.

4. The appellant and the respondent had entered into an Agreement of Sale in respect of suit plot in the year 1976 for a consideration of Rs.48,000/-. The appellant had paid a sum of Rs.5,000/- as earnest money.

5. On 18<sup>th</sup> January, 1977, the appellant's advocate requested the advocate for the defendant to send the title deeds of the suit plot to enable him to investigate the respondent's title. On 28<sup>th</sup> January, 1977, the respondent had forwarded the title deeds of the suit plot as asked for. The appellant thereafter published a public notice of the suit plot in daily newspapers "Free Press Journal" and "Janmabhoomi". After some negotiations between the parties, brother-in-law of the respondent namely, Mr. Bootwala by his communication dated 24<sup>th</sup> September, 1977 agreed to execute indemnity bond in favour of the appellant. Subsequently, by communication dated 11<sup>th</sup> March, 1978 and 3<sup>rd</sup> July, 1978, advocate for the appellant repeatedly requested and reminded the respondent's advocate to approve the draft conveyance. Thereafter, despite request, the respondent failed to obtain No Objection Certificate from the competent Authority under the Urban Land (Ceiling and Regulation) Act. After negotiation between the parties, the appellant's advocate by communication dated 3<sup>rd</sup> November, 1979 forwarded the draft of indemnity, power of attorney, declaration and letter of possession to the respondent's advocate for their approval. On 2<sup>nd</sup> April, 1980, the plaintiff's / appellant's advocate went to call upon the respondent's advocate to have the draft duly approved so that the same could be

executed against the payment of the compliance of the purchase price in respect of the suit plot. The respondent did not comply with the same. On 16<sup>th</sup> May, 1980, advocate for the appellant had requested the respondent's advocate to expedite the matter for completion of Sale, however, the respondent neglected to comply and, therefore, the present suit has been filed.

6. In the written statement, the defendant has taken a plea of limitation as well as the jurisdiction. It is also the contention of the defendant that there was no cause of action to file a suit and even the claim of damages is not maintainable. The respondent has specifically denied all the averments as regards negotiations in the month of October and November, 1979. The respondent has also denied that the appellant was always ready and willing to perform her part of agreement.

7. The learned trial Court framed the following issues and recorded his findings, which read as under :-

| <i>Sr. No.</i> | <i>ISSUES</i>                                                                                                                                       | <i>FINDINGS</i>           |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| 1.             | <i>Whether the agreement for sale dated December, 1976 (Ex.B to the plaint) is valid, subsisting and binding upon the plaintiff and defendant ?</i> | <i>Does not survive</i>   |
| 2.             | <i>Whether the plaintiff duly performed her obligation under the said agreement ?</i>                                                               | <i>Does not survive</i>   |
| 3.             | <i>Whether the plaintiff is and has always been ready and willing to perform her part of obligation under the said agreement?</i>                   | <i>Does not survive</i>   |
| 4.             | <i>Whether the plaintiff, pursuant to the said agreement, has already paid the earnest money of Rs.5,001/- to the defendant?</i>                    | <i>In the affirmative</i> |
| 5.             | <i>Whether the plaintiff has already paid</i>                                                                                                       | <i>In the negative</i>    |

|    |                                                                                                                                                            |                               |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
|    | <i>Rs.8,000/- to the unauthorised occupant on the suit property and is entitled to claim the same from the defendant ?</i>                                 |                               |
| 6. | <i>Whether the defendant failed and neglected to perform her obligation under the agreement and convey the property to the plaintiff ?</i>                 | <i>In the affirmative</i>     |
| 7. | <i>Whether the plaintiff is entitled for specific performance of the said agreement for sale being Ex.B to the plaint?</i>                                 | <i>In the negative</i>        |
| 8. | <i>In case the plaintiff is not entitled for specific performance of the agreement, whether the plaintiff proves that she is entitled for the damages.</i> | <i>In the negative</i>        |
| 9. | <i>What relief and what order ?</i>                                                                                                                        | <i>Suit stands dismissed.</i> |

8. This can be said to be a judgment which is quite perverse as neither the trial Court has properly discussed the legal issues on jurisdiction and limitation nor the findings are supported with any discussion on evidence. However, the learned trial Court has dismissed the suit. The reasons assigned by the trial Court are not only perverse but illegal and, therefore, need to be set aside.

9. Needless to say that the matter needs to be remanded to the trial Court in view of Order 41 Rule 23 of the Civil Procedure Code.

10. As such the following order is expedient :-

### **ORDER**

(a) The impugned judgment and decree, dated 27<sup>th</sup> September, 2017 passed in Suit No. 7436 of 1980 by the City Civil Judge, Greater Mumbai is quashed and set aside.

- (b) The suit shall be re-admitted under its original number in the register of civil suits.
- (c) The case is remanded to the trial Court with the directions that the trial Court shall give its findings on each of the issues of facts and law after giving due opportunity to the respective parties.
- (d) The evidence recorded by the trial Court during the original trial shall subject to all just exceptions, be evidence during the trial after remand.
- (e) The trial Court is directed to expedite the hearing of the suit and shall endeavor to decide and dispose of the same within a period of six months from the first date of the appearance of the parties.
- (f) The trial Court shall not grant unnecessary adjournment to the parties.
- (g) The parties shall co-operate in expeditious disposal of the suit.
- (h) The parties shall appear before the trial Court on 15<sup>th</sup> February, 2021 at 11.00 a.m.

11. The appeal is disposed of in the aforesaid terms.

12. In view of the disposal of the appeal, pending civil application does not survive and the same is disposed of.

**(PRITHVIRAJ K. CHAVAN, J.)**

After pronouncement of the order, Mr. Darshan Mehta, learned Counsel for the appellant has drawn my attention to an order passed by this Court in Notice of Motion No. 1375 of 1980 in Suit No.1353 of 1980 (Exh. B, page 39) passed by Justice Lentin, (as he was then) on 14<sup>th</sup> April, 1981, which reads thus :-

*“Through her learned Counsel, the defendant gives an undertaking to the Court in terms of prayer (b) of the motion with the exclusion of the words bracketed in red pencil, namely “dealing with” and “or allow any one else to use the same in any manner whatsoever” and with the addition of the words “or induct any third party in the suit property or any part thereof”. On the above undertaking being given, Mr. Subramaniam does not press the motion. No order on the motion save and except that the costs of the motion be costs in the cause”.*

The said order shall continue to operate till the decision of the suit on merits.

(PRITHVIRAJ K. CHAVAN, J.)