

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**Second Appeal Stamp No. 4433 / 2020
with
Interim Application No. 3071 / 2020**

Sanjay Shravan Yadav
Through Power of Attorney
Subhash Sanjay Yadav

.. Appellant

Vs.

Rahul Vilas Kambale and Anr.

.. Respondents

Advocate Chetan G. Patil for Appellant.

CORAM : SANDEEP K. SHINDE J.

DATE : 31st MARCH, 2021.

P.C. :-

Heard.

1. Rahul Vilas Kambale (Plaintiff-Respondent), relative of Shravan Rau Yadav, had instituted a suit for specific performance of contract dated 17th July, 2010 against him. After filing the written statement, Shravan Yadav died. His legal representatives were brought on

record.

2. The learned trial Court held that Plaintiffs had proved that on 17th July, 2010, deceased Shravan had agreed to sell the suit property to him for Rs. 6 Lacs, out of which, Rs. 3 Lacs. were paid as earnest money. The trial Court has also held that Rahul Kambale was 'ready and willing' to perform his part of a contract. Before filing the suit, Plaintiffs had issued notice at Exhibit-54, calling upon Shravan Yadav, to perform his part of the contract by accepting the balance consideration. Notice was admittedly not replied by Shravan Yadav. Plaintiffs had also examined a witness to prove the suit contract. Nevertheless Plaintiffs' witnesses, were not cross-examined by the Defendants- Legal heirs.

3. Mr. Patil, learned Counsel for the Appellant submitted that Sanjay Yadav (Defendant) was terminally ill and therefore could not cross-examine Plaintiffs' witnesses. He further submitted that Defendant had attempted to pursue the trial Court to set aside the order of "no cross-examination", however beyond submission there is

no material on record to suggest such efforts were being made. This contention is rejected.

4. It may be stated that Shravan Yadav, in his written statement denied the execution of the suit contract and this being suit for specific contract, the legal representatives of Shravan Yadav were estopped from raising additional or contrary defence. Obviously their defence was confined to defence of Late Shravan. The trial Court, after appreciating the evidence, decreed the suit. The Regular Civil Appeal filed by the Sanjay Yadav (Defendant No.1) also met with the same fate. On all issues of fact, concurrent finding has been rendered by the two courts below.

5. Mr. Patil submitted that the terms of the suit contracts were vague and therefore unenforceable. Admittedly, Shravan Yadav (Deceased Orig. Defendant) did not raise this point in his written statement, nor it was a ground before the first Appellate Court. In the circumstances, the reliance placed on the judgment of the

Hon'ble Apex Court, in the case of **Keshavlal Lallubhai Patel & Others Vs. Lalbhai Trikumlal Mills Ltd. 1959 SCR 213 : AIR 1958 SC 512**, no application to the facts of this case.

6. In consideration of the facts of the case, in my view, the appeal does not give rise any substantial question of law. Appeal alongwith Interim Application is rejected.

(SANDEEP K. SHINDE, J.)