

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.124/2021

Rajesh Shaligram Jaiswal & Anr. Vs. Chhugaram Lahorimal Khatri & Anr.

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri Rohan Chandurkar, Advocate for the Appellants.

CORAM : S.M. MODAK, J.

DATE : 8th JULY, 2021.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

Heard learned Advocate Shri Chandurkar for the appellants/original defendant Nos.3 and 4.

There was an agreement to sell in between the plaintiff and defendant Nos.1 and 2. The suit was filed for its specific performance. Defendant Nos.3 and 4 are the successful purchaser in whose favour there is a registered sale deed. Though defendant No.1 – Tarabai was alive at the time of filing of the suit, she expired prior to disposal of the suit. Trial Court has refused specific performance but there is direction to refund the earnest money.

The original plaintiff as well as defendant Nos.3 and 4 have preferred the appeals. Both the appeals were not decided by common judgment. The first Appellate Court granted specific performance and directed original defendant No.2 to execute a sale deed. So also, the original defendant Nos.3 and 4 were directed to join as vendors. The appeal filed by original defendant Nos.3 and 4 was dismissed as per the separate judgment.

By this appeal, original defendant Nos.3 and 4 are challenging the decree granting specific performance. Apart from the merits, it is submitted that, in fact, defendant No.2-Alka expired on 8th August, 2018 i.e. prior to the judgment, but it was not brought to the notice of the first Appellate Court. So there is a contention that the decree is against dead person and hence nullity.

Issue notice to respondent No.1 before admission, returnable after six weeks.

Civil Application (CAS) No.382/2021

In order to show the possession and the business being carried out, the appellants want to produce the documents. This Court do not feel that there is a dispute over possession of these appellants over the suit property.

Hence, production is allowed. Copies be served to respondent No.1.

The civil application is disposed of.

Civil Application (CAS) No.317/2020

In view of the possession over the suit property since 7th May, 1997, there is a request to stay the execution of the Appellate Court's decree. If the decree is executed, the purpose of filing this appeal will be frustrated.

Hence till appearance of respondent No.1, *ad-interim* stay is granted in terms of prayer Clause (a).

Issue notice to respondent No.1, returnable after six weeks.

Appellants to serve respondent No.1 of the appeal as well as this application by R.P.A.D. in addition to regular mode of service.

JUDGE

vijay