

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 SECOND APPEAL NO.537 OF 2021
WITH CA/12167/2021 IN SA/537/2021

RAMDAS GANPATI ANNAPWAD
VERSUS
BAPURAO MALBA KAPSE

...
Advocate for Appellant : Mr. Anuj Fulfagar h/f. Mr. Katneshwarkar P.R.
Advocate for the respondent : Mr. N.S. Jagdale h/f. Mr. V.D. Salunke
...

CORAM : MANGESH S. PATIL, J.

DATE : 21 APRIL 2022

PC :

This is second appeal by the original defendant who successfully defended the suit for specific performance in the trial court but has suffered a decree at the hands of the lower appellate court.

2. According to the respondent - plaintiff, the appellant had agreed to sell the suit house property for a total consideration of Rs.2,00,000/-, Rs.1,50,000/- was paid at the time of execution of the agreement on 09-01-2006 and the remaining Rs.50,000/- was paid on 17-04-2006 evidenced by another agreement. It is the case of the appellant as can be made out from the written statement that though he admitted about having received the monies he denied to have agreed to sell the suit house property. His stand is that only by way of security, the agreement and the subsequent writing was brought into existence.

3. The trial court had upheld the stand of the appellant and refused to grant specific performance but directed refund of the money.

4. The lower appellate court has concluded that the appellant had agreed to sell the suit house property and has received the entire amount of consideration.

5. The second appeal deserves to be admitted on following substantial question of law and stands **admitted** :-

I) Whether the discretion exercised by the trial court was so injudicious as would have entitled the lower appellate court to replace it in granting specific performance even when, the entire amount of consideration was paid without actual delivery of possession of the suit house property ?

6. Since the second appeal is being admitted and it is a decree for specific performance, the execution shall stand stayed till the final disposal of the second appeal.

7. Civil application no. 12167 of 2021 stands disposed of.

[MANGESH S. PATIL]
JUDGE

arp/