

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

SECOND APPEAL NO. 706 OF 2022

Asaram Kisanrao Shinde
Age. 64 years, Occ. Agriculturist,
R/o. Gujarwadi, Tq. Majalgaon,
Dist. Beed.

....Applicant
(Ori. Defendant)

Versus

Uttreshwar S/o. Parshuram Gaike,
Age. 72 years, Occ. Agriculturist,
R/o. Kille Dharur, Tq. Kille Dharur,
Dist. Beed.

....Respondent
(Ori. Plaintiff)

Advocate for Appellant : Mr. Amar V. Lavte
Advocate for Respondent : Mr. Vivek Bhavthankar

CORAM : RAJESH S. PATIL, J.

Reserved on : 28.11.2022

Pronounced on : 22.12.2022

JUDGMENT :

1. This appeal is filed by the original defendant challenging the concurrent finding of both the Courts below.

2. Respondent / original plaintiff had filed a suit for specific performance of a contract in respect of immovable property being agricultural land at village Patrud, Tq. Majalgaon. It was the case of the respondent / plaintiff that the defendant had agreed to sale suit property to the plaintiff for a consideration of Rs. 95,000/-. Accordingly, plaintiff had

paid a sum of Rs. 11,000/- and thereafter, a sum of Rs. 80,000/- to the defendant. A balance of Rs. 4,000/- was to be paid at the time of execution of sale deed. So also, the defendant was supposed to provide a certificate of dry land from the concerned authority. It is the case of the plaintiff that a document termed as agreement to sale was entered into writing on a stamp paper of Rs. 50/- on 15.02.2001. In the said agreement of sale, it was recorded that the plaintiff has paid a sum of Rs. 11,000/- and Rs. 80,000/- on two different dates i.e. on 13.11.2000 and 18.11.2000, respectively. It is the case of the plaintiff that thereafter, the defendant avoided to execute a sale deed, hence the plaintiff issued a legal notice dated 21.02.2005. However, said notice was returned back with a remark, "could not need the addressee". Hence, the plaintiff filed a suit for specific performance and also for a relief of perpetual injunction. The defendant appeared in the matter and filed a written statement and denied the facts stated by the plaintiff. The defendant stated that the plaintiff had lended a sum of Rs. 5,000/- which was to be returned back along with 4 % interest and again a sum of Rs. 5000/- was lended by the plaintiff to the defendant. The defendant admitted that plaintiff is a deaf person. The defendant further stated that a blank bond paper of Rs. 50/- was obtained by the plaintiff from the defendant. The defendant further stated that he had signed the said bond paper and it was as a security for the sum of Rs. 10,000/- lended by the plaintiff to defendant. It is the further case of defendant that the said sum was

returned back by the defendant to the plaintiff along with 4 % interest.

3. The plaintiff led his evidence and examined three witnesses including himself. The plaintiff examined the employee of Priyadarshani Mahila Nagri Bank Ltd., Beed, Branch Dharur. The plaintiff also examined one Mr. Bajrang Bangar in order to prove the agreement of sale. The defendant in turn examined himself and his wife.

4. In the evidence, the defendant admitted that there was no dispute between the plaintiff and defendant except the present litigation. The defendant also admitted that he does not signed any document without reading the contents thereof. He also admitted that he does not have any enmity terms with the P.W. No. 2 – Bajrang Bangar, Dashrath Gaikwad and Vashishtha Tambade (scribe). Based on this evidence, the trial Court decreed the suit of the plaintiff (respondent herein). An appeal carried by the appellant / original defendant was also dismissed. Against the said concurrent findings of both the Courts below, the present Second Appeal has been filed.

5. The agreement of sale is typed on a stamp paper. The said stamp paper is purchased in the name of defendant. The defendant in his cross-examination has admitted that the stamp paper was purchased by him. The plaintiff had issued a notice dated (blank) before filing of the suit, thereby, stating

that he is ready to pay the balance amount of Rs. 4,000/- to complete the transaction. The said notice was returned back to the plaintiff as it was not accepted by the defendant after having opened the cover containing the notice. The defendant had even not replied to the said notice.

6. The submission of the appellant/original defendant is that the document at Exh. 60 is unregistered, hence suit should fail; does not hold much ground as said document was only an agreement of sale and further, it was impounded and the plaintiff had paid the stamp duty as well as penalty on the said document. The defendant was not able to state when principal amount of Rs. 10,000/-, was obtained by him from plaintiff and further, when he returned Rs. 14,000/- to the plaintiff. The defendant admitted that he never raised any dispute regarding retaining of blank stamp paper of the defendant by the plaintiff. Defendant admitted that he never issued legal notice to plaintiff, nor filed any complaint in the police station. Defendant admitted in evidence that he does not sign any document without reading the contents. Both the Courts below have considered these facts.

7. Taking into consideration these facts, no substantial question of law arises and hence, the Second Appeal is dismissed.

(RAJESH S. PATIL, J.)