

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

**SECOND APPEAL NO.375 OF 2018
WITH
CIVIL APPLICATION NO.885 OF 2018
IN
SECOND APPEAL NO.375 OF 2018**

Shri. Dashrath Suryabhan Dhavale ...Appellant
vs.
Sou. Sharadabai Ratilal Salunkhe (Dead)
Thr LRS.1 Samadhan Ratilal Salunkhe & Ors. ...Respondents

**WITH
SECOND APPEAL NO.376 OF 2018
WITH
CIVIL APPLICATION NO. 888 OF 2018
IN
SECOND APPEAL NO.376 OF 2018**

Godabai Harilal Rajure ... Appellant.
V/s.
Sharadabai R Salunkhe (decd) through
Legal heirs & Ors. ... Respondents

Mr. Shriram S. Chaudhari for the appellants.
Mr. Prasad P. Kulkarni, for Respondent Nos. 1 & 2.

CORAM : NITIN W. SAMBRE, J.

DATED : 7th OCTOBER, 2022

P.C.:

1. Based on the registered agreement of sale dated 25/06/1997, respondents / plaintiffs initiated a suit for specific performance. The said suit came to be decreed on 24/08/2015.

During the pendency of the aforesaid suit the present appellant / defendant no. 2 purchased the suit property on 21/08/2007 and as such was impleaded in the suit proceedings.

2. After the suit was decreed, an appeal being 190 of 2015 carried by the present appellant was also dismissed on 13/02/2017. As such this second appeal.

3. The contentions of Mr. Chaudhary, learned counsel for the appellants are even if the Trial Court so also the Appellate Court has framed an issue as to the status of the appellant / defendant no. 2 as that of bonafide purchaser, the same is not properly dealt with. As such, both the judgments warrant interference.

4. While countering the aforesaid submissions, learned counsel for the respondents / decree holders would invite attention of this Court to the execution of sale deed pursuant to the decree in his favour by the Court Commissioner on 02/04/2019, which was followed with possession of the suit property.

5. According to him, since the decree for specific performance is already executed, the appeal is liable to be dismissed.

6. I have appreciated the aforesaid contentions.

7. According to Mr. Chaudhary, learned counsel for the appellants, inspite of the aforesaid execution of the sale deed by

the Court Commissioner pursuant to the directions of the Executing Court which also mentions stipulations about receipt of possession by the respondents/decreed holders has tried to dispute the proposition of the possession being received by the respondents/decreed holders. According to him, the possession still remains with the appellant.

8. The aforesaid contentions in my opinion are liable to be rejected particularly in the light of true copy of the sale deed produced by the counsel for respondents/decreed holders which appears to have been executed by the Court Commissioner as was directed by the Executing Court.

9. The recitals specifically speak of handing over of possession to the respondents/decreed holders by the Court Commissioner.

10. Apart from above, the issue of the bonafide purchaser for valued without notice has been duly considered by the Trial Court vide issue no. 4C. The Trial Court in detail has considered the aforesaid issue and has noticed that the appellant / defendant no. 2 has failed to discharge his initial burden. While doing so the Court below was sensitive to the provisions of the section 19 of the Specific Relief Act.

11. The Court has noticed that the defendant nos. 1 & 2 both

have failed to discharge their burden as to establish the case of appellant that he is purchaser of the property without notice. The appellate Court while dealing with the said issue has in categorical term recorded the specific findings that the appellant has failed to demonstrate that he is purchaser of the suit property without notice.

12. The Exhibit-41, the agreement of sale in favour of the plaintiff speaks of the possession being handed over by the defendant no. 1 to the plaintiff. It appears to be the case of the appellant that he has received possession of the suit property from the defendant no 1 under the sale deed dated 21/08/2007.

13. It was accepted of the appellant to establish his possession over the suit property by adducing appropriate oral evidence so also documentary evidence which he has failed to.

14. Apart from above, in view of the provisions of section 91 & 92 of the Evidence Act, the agreement of sale of 25/06/1997 was rightly held to be conferring the lawful possession in favour of the decree holder.

15. As far the case of the defendant no. 1 is concerned, once the defendant no. 1 has come out with the plea of existence of money lending transaction, the burden shifts on the appellant / defendant

no. 1 to prove the said case. Both the Courts have concurrently held that the appellant even if has set up such a plea, was unable to discharge such burden.

16. Rather the recitals in the agreement of sale which is registered document has been considered to be a basis for inferring that the plea set up by the appellant / defendant no. 1 of existence of money lending transaction is without any basis.

17. In the aforesaid background, having regard to the concurrent findings recorded by the both the Courts below, no case for interference is made out as the second appeal sank any question of law. The appeal as such fails and dismissed

18. As a sequel above, pending applications also stand dismissed.

(NITIN W. SAMBRE, J.)