

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

Second Appeal No.149 of 2022

Vijay s/o Nanaji Ujjainkar

vs.

Keshav Payrujii Shankarpale & another

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

Court's or Judge's Orders

Mr. A.A. Mardikar, Advocate for the Appellant.

CORAM : NITIN W. SAMBRE, J.

DATE : 30th AUGUST, 2022.

Respondent No.1 initiated R.C.S. No.12/2020 on the file of Civil Judge Junior Division, Morshi seeking relief of specific performance of contract, recovery of damages against the appellant/defendant. The suit was partly decreed. The claim for specific performance was rejected, however, the directions were issued to refund the earnest amount of Rs.25,000/- with interest at the rate of 8% per annum.

02] Feeling aggrieved, the plaintiff preferred an appeal being R.C.A. No.87/2013, which was partly allowed vide impugned judgment and order dated 21/10/2021 passed by the Principal District Judge, Amravati. The appellate Court directed the appellant/defendant to execute sale-deed in respect of suit property in favour of the plaintiff with direction to the respondent/plaintiff to pay the appellant/defendant No.1 the balance consideration within a period of one month.

03] While questioning to the aforesaid judgment, the learned Counsel for the appellant/defendant would urge that

the Court below committed an error in recording a finding that the plaintiff was ready and willing to perform his part of contract. According to him, the evidence of the rival parties is incorrectly appreciated in the backdrop of the rival pleadings of the parties.

04] I have appreciated the said contentions. The present appellant filed his written statement at Exh.15, thereby contending that the agreement of sale was not genuine and an unregistered document. It is also claimed that the respondent/plaintiff is not in possession of the suit land.

05] Defendant No.2, i.e. the real brother of the present appellant, vide his written statement (Exh.18) has claimed that the Land Survey No.184/2 situated at village Khed, Land Survey No.28/4 at village Taraoda and the house property were partitioned after the demise of their father and, accordingly, the independent mutation entries were carried out.

06] In the aforesaid backdrop, if the evidence of the plaintiff, which is recorded at Exh.47 and that of DW-1 is appreciated, what can be noticed is, defendant No.2 remained in independent possession of the share of the property, which has gone to him in the matter of partition. That being so, the contention that without consent of defendant No.2 the property cannot be transferred to the plaintiff, is without any basis.

07] Apart from above, on the issue of readiness and willing, it was noticed in the written statement about readiness

and willingness of respondent No.1/plaintiff to perform his part of contract. The appellant/defendant No.1 has not disputed the position, which has led to drawing the inference that respondent No.1 was ready and willing to perform his part of contract.

08] In the aforesaid backdrop against the concurrent findings, no question of law is involved. The appeal stands dismissed.

JUDGE

**sandesh*