

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

SECOND APPEAL NO.80/2020

APPELLANT :

(On RA)

Original Defendant in S.C.S.No.270/2004 & Appellant in RCA 163/2012
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Prabhakar s/o Shriram Alaspure
Aged about 53 years, Occupation :
Cultivator, R/o Bopi, Nemtabad,
Post – Hivra Bk. Taluka : Nandgaon
District : Amravati.

...VERSUS...

RESPONDENTS :

Original Plaintiffs in S.C.S. No.270/2004 & Respondents in RCA No.163/2012
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1. Manik S/o Kisan Alaspure
Through L.Rs.

A. Smt. Subhadra wd/o Manikrao Alaspure,
Aged about 53 Years, Occupation : Household.

B. Rishikesh S/o Manikrao Alaspure
Aged about 34 Years, Occupation : Service

C. Sau. Shital W/o Amol Tanpure,
Aged about 30 years, Occupation :
Household.

D. Raju Manikrao Alaspure
Aged about 27 Years, Occupation : Student.

All R/o. Bopi Nentabad, Post – Hivra Bk.
Taluka : Nandgaon Khandeshwar
District : Amravati.
2. Smt. Tara W/o Dadarao Alaspure
Aged about 55 Years.
3. Vijay S/o Kisan Alaspure
Aged about 45 Years.

4. Bandu S/o Kisan Alaspure
Aged about 40 Years.

R-2 to 4 Cultivators of Bopi Nentabad,
Post – Hivra Bk. Taluka : Nandgaon
Khandeshwar, District : Amravati.

Shri Omkar Deshpande, Advocate for appellant
Shri Akshay Sudame, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/09/2022

ORAL JUDGMENT

1. Heard Shri Omkar Deshpande, learned counsel for the appellant and Shri Akshay Sudame learned counsel for the respondents.

2. By the order dated 26/02/2020, this Court had framed the following substantial question of law.

“Whether both the Courts below are right in directing the defendant/appellant to pay ₹6,20,700/- along with interest at the rate of 10% per annum in absence of any privity of contract between the plaintiffs and defendant ?

3. The appeal is admitted on the above substantial question of law and is taken up for final disposal with the consent of the learned counsel for the rival parties.

4. The appeal challenges the concurrent judgments of the Courts below, by which the learned Trial Court by its judgment dated 18/10/2008 has decreed the suit for recovery filed by the respondents/plaintiffs in the sum of Rs.6,20,700/- with interest @ 10% per annum from the date of suit till its realization (pg.28), which judgment has been confirmed by the learned Appellate Court by its judgment dated 22/11/2019.

5. Shri Omkar Deshpande, learned counsel for appellant raises two grounds (i) that there was no privity of contract between the plaintiffs and defendant, in absence of which it was not permissible for the Courts below to have decreed the suit for recovery of money and (ii) the award of interest @ 10% per annum from the decretal amount is unsustainable in law.

6. Shri Akshay Sudame, learned counsel for the respondents supports the impugned judgments and contends that

the question of privity of contract is clearly not attracted in the present matter, considering the fact position and since the transaction was a commercial one, the Courts below have rightly awarded the interest @ 10% per annum.

7. The undisputed position between the parties is as under :

The plaintiffs were the owners of agricultural land bearing Survey no.16/2 admeasuring 1.22 HR and 16/3 admeasuring 1.21 HR situated at village Bopi. Since the plaintiffs were intending to sell the same for a good consideration, the defendant, who was related to the plaintiffs, approached them and afforded his aid in procuring an appropriate buyer for a good price for sale of the aforesaid lands. Accordingly, a power of attorney was executed by the plaintiffs in favour of the defendant on 25/03/2004 Exh.24 authorizing the defendant to execute and register the sale-deed of the aforesaid lands in favour of the prospective buyer and so also to receive the consideration under such sale-deed. In pursuance to the said power of attorney, the defendant on 08/04/2004 (Exhs.25 and 26) executed and registered two sale-deeds of the aforesaid property in favour of M/s Bhaskar Foods Pvt. Ltd., for the

total consideration of Rs.9,97,000/-. It is not in dispute that an amount of Rs.3,76,300/- thereafter has been paid by the defendant to the plaintiffs by cheques. It is the case of the defendant that further amount of Rs.2,24,700/- was paid in cash to the plaintiffs from time to time, which amount has been deposited by the plaintiffs in their bank account. It is further contended that since the plaintiff no.2-Tarabai Alaspure did not have a bank account, the defendant had in fact assisted and identified her in the matter of opening of her bank account, in which a deposit of Rs.1,00,000/- is claimed to have been made by the defendant. The defendant further claimed to have made a payment of Rs.1,24,700/- in cash to the plaintiffs, thus totalling it to Rs.2,24,700/-. Thus, according to the defendant a total amount of Rs.6,00,000/- stood paid to the plaintiffs and what was balance and payable was only Rs.3,97,000/- It is, thus, apparent that insofar as the payment of Rs.3,97,000/- is concerned, the defendant does not dispute his liability for the same. The only thing which remained to be considered is the question regarding the privity of contract; whether Rs.2,24,700/- was paid in cash and the issue of interest.

8. Insofar as the plea regarding absence of privity of contract is concerned, it is apparent that the defendant under the power of attorney dated 25/03/2004 (Exh.24) was the agent of the plaintiffs in the transaction effected by him under the power of attorney aforesaid and therefore having received consideration from the purchaser under the aforesaid two sale-deeds dated 08/04/2004 was liable to an accounting and payment of the consideration received, to the plaintiffs, who were the owners of the property. Thus, the question of any privity of contract is clearly *non est*, as the defendant in view of the relations of principal and agent was legally bound to make over the payment of the consideration received by him under sale-deeds dated 08/04/2004 to the plaintiffs. The ground raised in this regard by Shri Omkar Deshpande, learned counsel for the appellant is answered in negative.

9. In order to prove the allegations that Rs.2,24,700/- was paid in cash, Shri Omkar Deshpande, learned counsel for the appellant/defendant relies upon the cross-examination of the plaintiff no.1-Manik Alaspure at Exh.21, in which he admits that on 20/05/2004 an amount of Rs.20,000/- has been deposited in the

name of his wife. This admission, however, does not assist the defendant in any manner whatsoever as the plaintiff no.1 goes on to explain that he had brought this amount from his employer and deposited in his wife's account. Further reliance is placed upon the cross-examination of PW 2 – Tarabai Alaspure, in which, she states that she has not filed any document to show how the amount of Rs.1,00,000/- was paid to Pundalik, her brother. This statement, in my considered opinion, would not indicate that it is the defendant, who has deposited the amount of Rs.1,00,000/- in the account of Tarabai and therefore, the amount of Rs.1,00,000/- was a part of the consideration, which she has received under the sale-deeds dated 08/04/2004. Though as many as four witnesses have been examined by the defendant, the Courts below have rightly disbelieved them as their evidence does not indicate any support to the plea of the defendant of having paid the part consideration of Rs.2,24,700/- in cash to the plaintiffs. That being the position, in my considered opinion, the findings recorded by the Courts below regarding non-proving of the payment of cash by the defendant to the plaintiffs cannot be interfered with.

10. Shri Omkar Deshpande, learned counsel for the appellant places reliance upon *Union of India Vs. Watkins Mayor & Co. AIR 1966 SC 275*, para 5, *Rajni Kumar Vs. Suresh Kumar Malhotra and another (2003) 5 SCC 315* para 13 and *Vijaya Bank and etc. Vs. Art. Trend Exports and etc. AIR 1992 Cal. 12* para 12.3, to contend that what was permissible to be paid was interest @ 6% per annum and nothing over and above that.

11. In *Watkins Mayor & Co.* (supra) the Hon'ble Apex Court, held that interest @ 6% per annum was payable when no rate of interest was specified in the promissory note or bill of exchange in view of Section 80 of the Negotiable Instruments Act, 1881. Admittedly, in the instate case there is no promissory note or bill of exchange, considering which, the provisions of Section 80 of the Negotiable Instruments Act are not applicable. In *Rajni Kumar* as well as *Vijaya Bank* (supra) the Hon'ble Supreme Court held that since the transaction was not of a commercial nature, it would not carry interest beyond 6 % relying upon Section 34 of the Code of Civil Procedure. In the instant case, the transaction of sale was of immovable property to Bhaskar Foods Pvt. Ltd., which would

indicate that the purchase of the property by Bhaskar Foods Pvt. Ltd., a Company incorporated under the Companies Act, 1956 was for its commercial utilization and there was a commercial transaction, considering which, in view of the proviso to Section 34 (1) of the Code of Civil Procedure, it was permissible for the Court, to grant interest exceeding 6% per annum, in view of which, I do not find any infirmity in the Court having awarded interest @ 10% per annum. The substantial question of law as framed on 26/02/2020 is therefore answered in the negative and the appeal is dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar