

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

**SECOND APPEAL NO.47 OF 2020**

- Appellant** : **Shri Muneshwar s/o Shriram Tighare,**  
Aged about 60 Years, Occ. Agriculture,  
R/o Kudwa, Gondia.
- Versus –
- Respondents** : 1. **Shri Laxman s/o Dayaram Moudekar,**  
Aged about – Major,  
R/o Post Kudwa, Tah. & Dist. Gondia.
2. **Shri Bharat s/o Dayaram Moudekar,**  
Aged about – Major,  
R/o Post Kudwa, Tah. & Dist. Gondia.
3. **Smt. Hirkanbai w/o Dhondu Suryawanshi,**  
Aged about Major,  
R/o Pipariya, Post Pipariya, Paraswada, Tahsil,  
Tirora, Dist. Gondia.
4. **Smt. Shantabai w/o Umaprasad Fulbandhe,**  
Aged about Major,  
R/o Girola, Post Pandrabodi,  
Tahsil and District Gondia.
5. **Smt. Kantabai wd/o Rajaram Suryawanshi,**  
Aged about Major,  
R/o Sitepar, Post Sitepar,  
Tahsil and District Gondia.

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*Mr. Virat Mishra, Advocate for the Appellant.*  
*None for the Respondents.*  
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**CORAM** : **NITIN W. SAMBRE, J.**

**DATE** : **30<sup>th</sup> AUGUST, 2022.**

## **J U D G M E N T :-**

The challenge in the appeal is to the judgment and decree passed in R.C.A. No.48/2013 delivered on 08/11/2016 by the Principal District Judge, Gondia confirming the judgment and decree passed in R.C.S. No.89/2011 delivered on 18/02/2013.

02] The appellant/plaintiff initiated aforesaid suit for specific performance alleging that he has agreed to purchase the suit property vide agreement dated 03/02/1999 at the rate of Rs.30,000/- per acre. The suit claim was resisted by the respondents/defendants through written statement Exh.12.

03] The factum of entering into an agreement dated 03/02/1999 was answered in favour of the appellant/plaintiff so also the payment of earnest money. However, since the claim of relinquishment of right in the suit property by defendant Nos.3 to 5 in favour of defendant Nos.1 and 2 was not proved, the suit came to be dismissed, which judgment was affirmed in the appeal.

04] The contentions of the learned Counsel for the appellant are, the Courts below once having observed that the agreement of sale so also the payment of part consideration is proved, it ought to have decreed the suit. It is claimed that the Courts below failed to appreciate the oral and documentary evidence on record.

05] I have appreciated the said submissions. It appears that on the date of agreement, defendant Nos.1 and 2 were not having any title over the suit property, however, they claimed to have acquired the same through relinquishment-deed. Such relinquishment was not proved by defendant Nos.1 and 2. Categorical findings by both the Courts are recorded as the defendant Nos.1 and 2 have failed to prove their possession over the suit property. The appellant, who is claiming possession through defendant Nos.1 and 2, has not only failed to demonstrate his lawful possession over the property, but also unable to demonstrate the lawful title in favour of respondent Nos.1 and 2.

06] The finding of facts recorded by both the Courts below have concurrently held against the appellant. In absence of discharge of burden by the appellant/plaintiff to prove his case about the alleged contingent contract or otherwise, in my opinion, the findings recorded by both the Courts below are based on the pleadings and material in the form of evidence. That being so, no case for interference is made out.

07] The appeal, as such, stands dismissed with no order as to costs.

**(NITIN W. SAMBRE, J.)**

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