

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

SECOND APPEAL NO. 148 OF 2018

[Gajananrao Shyamraoji Deshkar and Anr. **..Vrs..** Bhaiyya Sahebrao
Chore]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions*

Court's or Judge's order and Registrar's orders.

Shri. C. A. Joshi, Advocate for the Appellants.

Ms. V. Khadekar, Advocate for Respondent.

CORAM : S. M. MODAK, J.

DATE : 13th JUNE, 2022.

. Heard learned Advocate for the appellants/the original defendants and learned Advocate for the respondent/the original plaintiff.

2. This Court while issuing a notice on 10th of August, 2018, has already framed two substantial questions of law and execution of the impugned judgment is stayed until further orders. After receipt of a notice, the respondent/plaintiff has appeared and is opposing admission as well as continuation of the stay.

3. There was an agreement in between the deceased Sulochanabai vendor/mother of defendant no.1 and mother-in-law of defendant no.2. She has agreed to sell the suit land in the year 1991 to the father of plaintiff/present respondent for consideration of Rs.9,000/- (Nine Thousand). Isar Chitti was executed and Rs.5,000/- (Five Thousand) was paid. Remaining Rs.4,000/- (Four Thousand) was agreed to be paid prior to 31st of January, 1992. The suit land was under reservation. The owner has agreed to obtain a permission prior to execution of the sale deed. Though it was applied, it was refused.

Remaining amount of Rs.3,000/- was paid on 20th of January, 1992 and Rs.1,000/- was paid on 21st of December, 1993. These amounts were paid to son of original vendor i.e. present defendant no.1. It is disputed by him. This is the main area of dispute between the parties. Apart from that, the defendants have also taken a plea that suit is barred by law of limitation.

4. After evidence, the learned Trial Court has answered the issue of limitation against the defendants and answered the issue of readiness and willingness against the plaintiff. In Appeal, First Appellate Court reversed the decree and decreed the suit. The First Appellate Court led more emphasis on the provisions of Section 20 of Specific Relief Act, 1963 and observed that the suit of specific performance has to be decreed. These findings are challenged by the defendants.

5. Substantial questions of law are already framed. It is true that the First Appellate Court has set aside the findings of the learned Trial Court on the point of readiness and willingness. So, this Court is required to go into the correctness of those findings on the basis of evidence. So the Appeal needs to be admitted. Hence **Admit** the Appeal.

6. Learned Advocate waives notice for respondent. Matter be listed in usual course.

CIVIL APPLICATION (S) NO.1012 OF 2018.

7. The respondent/original plaintiff is already in possession and cultivating the land. So, stay is confined only to execution of sale deed as per the order of First Appellate Court.

8. In view of admission of the Appeal, that stay needs to be continued. During the pendency of the Appeal, stay is continued.
9. Civil application is disposed of.

JUDGE

TAMBE

**ASHISH
ASHOKRAO
TAMBE**

Digitally signed by
ASHISH
ASHOKRAO TAMBE
Date: 2022.06.15
10:50:41 +0530