

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

SECOND APPEAL NO.344 OF 2021

[Smt. Shakuntalabai w/o Kawduji Dhone .vs. Shri Harinarayan s/o Champatrao Badiye]

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

Court's or Judge's orders

 Shri S.A. Choudhari, Advocate for the Appellant,
 Shri Shriram Deoras, Adv. a/w Shri Shrikant Pande, Adv. for Respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 22/08/2022.

Respondent-original plaintiff filed a suit for specific performance of contract, possession, declaration and permanent injunction with an alternate prayer for refund of amount.

2. The learned trial Court allowed the alternate prayer for refund of amount. The said judgment was under challenge before the District Judge, Nagpur. The learned District Judge, Nagpur directed the defendant-appellant to execute the registered sale deed of the suit property. The learned trial Court held that the plaintiff was not ready and willing to perform his part of contract.

3. There was no dispute over the fact that the defendant received total amount of consideration. Learned trial Court failed to appreciate that there was already regularization of the said plot which was one of

the conditions and without considering that came to the conclusion that the plaintiff have not taken the steps for regularization of the plot and on the point of readiness and willingness, the trial court came to the conclusion of alternate relief. However, the learned appellate court, after appreciating this fact and letter issued by the Nagpur Improvement Trust concluded that the total consideration was paid and also the conditions as per agreement are complied with.

4. In view thereof, it is concluded that the appellant is ready and willing to perform his part of contract and granted relief of specific performance. As such, I do not see any substantial question of law involved in the matter. The appeal is accordingly **dismissed.**

[Smt. M.S. Jawalkar, J.]

Gulande