

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.327 OF 2021

Feroz Khan s/o Khan Ahmed Khan,
Age 36 years, Occupation Agriculture,
R/o Vassa, Tq. Jintur, Dist. Parbhani. **..Appellant**

VERSUS

- 1) Yunus Khan s/o Khan Ahmed Khan,
Age 42 years, Occupation Business,
R/o Vassa, Tq. Jintur, Dist.Parbhani.
- 2) Prakash s/o Rambhau Raut,
Age 40 years, Occupation Agriculture,
R/o Vassa, Tq. Jintur, Dist.Parbhani.
- 3) Rohidas s/o Narayanrao Raut,
Age 46 years, Occupation Agriculture,
R/o Vassa, Tq. Jintur, Dist.Parbhani. **..Respondents**

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Advocate for Appellant : Mr. Wasif S. Shaikh h/f
Mr.Javed Deshmukh
.....

CORAM : ARUN R. PEDNEKER, J.

**Date of Reserving the Judgment :
10/07/2023**

**Date of Pronouncing the Judgment:
28/07/2023**

JUDGMENT :

By the present second appeal the appellant is challenging the

order passed by the Appellate Court whereby the appellate Court upheld the order passed by the Trial Court dismissing the suit filed by the appellant for specific performance of contract and injunction and for declaration of sale deeds dated 19/04/2002 and 05/09/2003 as null and void.

2. Facts in brief can be summarised as under :-

The plaintiff and defendant No.1 are real brothers. The suit land bearing Gut No.304 admeasuring 1 H 27 R is situated at village Vassa Tq. Jintur Dist.Parbhani. The defendant No.1 was having a share in water in the well situated in Gut No.303 belonging to his father. The defendant No.1 was in need of money to run his business of grocery shop at Parbhani, therefore he agreed to sell the suit land along with the trees and share in the well for consideration of Rs.1,75,000/- to the plaintiff by an agreement to sell dated 03/05/2000 and the plaintiff paid earnest amount of Rs.1,25,000/-. Remaining balance amount of Rs.50,000/- was to be paid at the time of execution of sale deed. It is further the case of the plaintiff that the defendant handed over the possession of the suit land on the same day and the plaintiff was ready and willing to pay the remaining balance amount of Rs.50,000/- to the defendant No.1 and

wanted to get the sale deed, executed.

3. It is further the case of plaintiff that the defendant No.1 executed a sale deed of suit land in favour of defendant No.2 on 19/04/2002. Thereafter, the defendant No.2 executed a sale deed of the suit land in favour of defendant No.3 on 05/09/2003. The defendants No.2 and 3 have mutated their names in the records of rights register. It is the case of the plaintiff that the defendants are trying to obstruct the possession of the plaintiff on the basis of the above sale deeds, and as such, the plaintiff filed the suit for specific performance of the contract as also injunction against the defendants No.2 and 3 and for declaration of the above sale deeds made by defendant No.1 in favour of defendant No.2 and defendant No.2 in favour of defendant No.3 as void and not binding upon the plaintiff.

4. The suit was not contested by any of the defendants. The Trial Court formulated the issues as under for consideration :-

	<u>ISSUES</u>	<u>FINDINGS</u>
1)	Whether the plaintiff proves that the defendant no.1 agreed to sell the suit land for the consideration of Rs.1,75,000/- and defendant No.1 executed a Taba Issar Pavti in his favour ?	...Not proved.

2)	Whether the plaintiff proves that sale deeds dt.19.04.2002 and 5.9.2003 are illegal ?	...Not proved.
3)	Whether the plaintiff is entitled to reliefs sought ?	...As per final order.

The Trial Court on examination of the evidence held that the plaintiff has not been able to prove the agreement to sale i.e. the Taba Issar Pavti dated 03/05/2000. The Trial Court held that the document dated 03/05/2000 is insufficiently stamped under Article 25 Schedule-I of the Bombay Stamp Act, and therefore, it is not admissible in evidence. The Trial Court further observed that the plaintiff has not tried to mutate his name from 2000 to 2003 nor he made attempt to seek the execution of the sale deed. Therefore, it is not possible to accept the oral evidence that the plaintiff that he has paid Rs.1,25,000/- to defendant No.1 prior to the possession of the suit land. The Trial Court accordingly dismissed the suit.

5. The appellant challenged the order of the Trial Court before the First Appellate Court. The Appellate Court formulated the following points for consideration :-

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiff proves that the defendant No.1 had agreed to sell him the suit property for Rs.1,75,000/- and	..In the negative

	executed Taba Isar Pavti on 3.5.2000 ?	
2)	Whether the plaintiff proves that he was and is ready and willing to perform his part of the contract ?	..In the negative
3)	Whether the plaintiff is entitled to specific performance of contract ?	..In the negative
4)	Whether interference in the order of the learned Trial Court is called for ?	..In the negative
5)	What order ?	..As per final order

6. The Appellate Court on examination of the material on record, held that even if the agreement to sell is executed coupled with delivery of possession it would amount to a conveyance and the learned Trial Court has rightly held that the proper stamp duty was not paid and that the agreement of sale was not admissible. The Appellate Court also held that even if it is permitted to impound the document i.e agreement of sale, and stamp duty is paid thereon, it will have no effect because suit is liable to be dismissed on other grounds. The Appellate Court held that the appellant has not examined the petition writer to prove the document i.e. the agreement to sale. It is also held by the Appellate court that it is not contended by the appellant that he was ready and willing to perform his part of the agreement. The Appellate Court also noticed that the plaintiff did not file the suit immediately after execution of

sale deeds on 19/04/2002 and 05/09/2003. He filed the suit in the year 2004. It is further held by the Appellate Court that the plaintiff made no attempt to record his name in the record of rights over possession of the suit property. The Appellate Court held that the plaintiff has not been able to prove his possession on the suit property and he has not adduced any evidence to that effect. Taking into consideration the documents on record and the evidence on record, the Appellate Court upheld the order passed by the Trial Court. The appellant is in second appeal before this Court.

7. The appellant contends that even if the sufficient stamp duty is not paid, the document can be used for collateral purpose and that it is permissible too and that he was put in possession by virtue of agreement to sell. The Constitution Bench Judgment of the Hon'ble Supreme Court in the case of *N. N. Global Mercantile Private Limited Vs. Indo Unique Flame Ltd. And Ors., (Civil Appeal Nos.3802-3803 of 2020)*, decided on 25/04/2023, has held an unstamped instrument, when it was required to be stamped under the Stamp Act does not exist in the eye of law unless the instrument is validated under the Stamp Act by paying the requisite stamp duty as may be levied. An agreement which attracts stamp duty and which

is not stamped or insufficiently stamped, cannot be acted upon, unless following impounding and payment of requisite stamp duty.

8. Even otherwise in the instant case, the finding recorded is that there is no such agreement of sale entered into by the plaintiff with the defendant No.1. The possession of the plaintiff is also not established over the suit property. Since the Isar Pavti itself is not proved, the question of using it for collateral purpose does not arise.

9. Thus, it cannot be held that the orders passed by the Courts below are unlawful. In view of the same, the present second appeal is dismissed as no substantial question of law arises for consideration.

(ARUN R. PEDNEKER, J.)

vj gawade/-.