

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 135 OF 2023

Balkrishna Somnath Lahoti

Appellant

Versus

Maka Wakra Patil & others

Respondents

Mr. S. H. Tripathi, Advocate for the appellant.

CORAM : R. M. JOSHI, J.

DATE : 17th MARCH, 2023.

PER COURT :

1. Heard.

2. This second appeal is preferred against the judgment and decree dated 2nd December, 2022, passed by the District Judge, Nandurbar in Regular Civil Appeal no. 29/2017 whereby the judgment and decree passed in Regular Civil Suit No. 40/2014 by 5th Civil Judge Junior Division, Nandurbar is confirmed.

3. Appellant-plaintiff has filed a suit for specific performance of contract with the averments that defendants executed agreement to sell dated 23rd November, 2005 for the sale of

agricultural land bearing Gat No. 63 admeasuring 1 H 29 R situated at Akrale, Nandurbar. According to the plaintiff, the consideration was fixed at Rs. 1,75,000/-. He further claims that after paying earnest money, from time to time he paid total sum of Rs. 3,73,000/- as demanded by defendants for various reasons. Defendants though did not dispute execution of agreement to sell, but they claim it to be not a transaction for sale but a loan transaction.

4. Since it is a suit for specific performance, the initial burden is on the plaintiff to plead and prove his readiness and willingness to perform his part of the contract. There is neither pleading nor evidence to that effect on record.

5. Learned counsel for appellant states that there is substantial question of law involved in this appeal regarding interpretation of agreement to sell with regard to the limitation period which would be applicable for filing of the suit. On going through the recitals of the agreement, there cannot be two opinions that had plaintiff applied for necessary permission and the sale-deed was to be executed only after obtainment of such permission. It is however,

apparent from the record that for a period of about eight years, no permission was applied for nor any attempt was made to secure the same. Thus, this is not a case of interpretation of the documents but the appellant is asking this Court to interfere into the findings recorded by the Trial Court and the First Appellate Court on facts.

6. This Court is of the view that on the basis of material evidence on record, plaintiff has failed to prove his readiness and willingness so also that for substantive period of eight years no action was taken to seek permission as agreed by him. In the circumstances, no error seems to have been committed by both the Courts below in accepting the case of the defendants and dismissing the suit. In the result, appeal stands dismissed as no substantial question of law is involved therein.

7. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge