

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 724 OF 2017

Nandkishor Pusaram Maheshwari	... Appellant
<i>Versus</i>	
Navnath Akhadu Mali and Ors.	... Respondents

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Mr. R.S. Pawar – Advocate for Appellant
Mr. R.R. Sancheti with Mr. A.N. Sabnis – Advocates for Respondent No.2

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CORAM : GAURI GODSE, J.
DATE : 1st February, 2023

PER COURT :

1. This appeal is filed by the plaintiff for challenging the concurrent decree thereby dismissing the suit filed by the appellant for seeking specific performance. An agreement dated 3rd October, 2000 is claimed to have been executed by respondent no.1 in favour of appellant.
2. The Special Civil Suit No. 15 of 2001 filed by the appellant was dismissed on 1st December, 2011 by learned Civil Judge Senior Division, Nadurbar. The Trial Court recorded that the appellant failed to prove the execution of agreement in his favour by

making payment of earnest money. The finding with respect to readiness and willingness is also recorded against the appellant. Subsequently there was sale-deed executed by respondent no.1 in favour of respondent nos. 2 and 3. The trial court has also recorded a finding that, pursuant to the sale-deed executed in favour of respondent nos.2 and 3, they are bonafide purchasers and with these findings suit filed for specific performance by the appellant was dismissed by the trial court. The appellant filed Regular Civil Appeal No. 76 of 2012 challenging the dismissal of his suit. The learned District Judge, Nandurbar on 10th February, 2017 has dismissed the appeal preferred by the appellant.

3. The learned counsel for appellant submitted that, there was sufficient evidence to accept that there was a concluded contract in favour of the appellant. The first appellate court has also recorded that there was mischief played by defendant nos.2 and 3. Hence, he submitted that, once the findings of the trial court, that respondent nos.2 and 3 were bonafide purchasers is set aside the first appellate court ought to have granted relief of

specific performance in favour of appellant.

4. Perusal of the judgment of first appellate court shows that, certain observations are made regarding conduct of respondent nos.2 and 3, and findings of trial court holding respondent nos.2 and 3 as bonafide purchasers is set aside. However, these findings are of no assistance to the present appellant for supporting his submissions that, there was a concluded contract in his favour. After examining the evidence on record both the courts have held that there was no concluded contract in favour of present appellant. All the submissions made by the learned counsel on behalf of appellant in the present appeal are with respect to factual aspects. The second appeal do not raise any substantial question of law. Hence, the Second Appeal is dismissed.

[GAURI GODSE]
JUDGE