

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

34 SECOND APPEAL NO.585 OF 2022
WITH CA/12391/2022 IN SA/585/2022

TUKARAM NARAYANRAO GUDALE
VERSUS
SHANKAR VISHNUPANT MIRAJKAR AND ORS

Mr.A.V. Patil-Indrale, Advocate for the appellant.

CORAM : KISHORE C. SANT, J.
DATED : 09.11.2023

PC :-

01. Heard learned Advocate for the appellant for some time.

02. This appeal is preferred against common judgment and order passed by the learned District Judge-1, Nilanga, Dist. Latur dated 26.04.2022 in RCA No.94 of 2013 filed by defendant No.1 and RCA No.3 of 2016 filed by the plaintiff/present appellant.

03. The plaintiff had filed a suit for specific performance of contract, thereby seeking execution of sale-deed by defendant No.1 in his favour of the suit land. It is case that the defendant is owner of land Survey No.45, village Dagadwadi, (Panchincholi), Tq. Nilanga, Dist. Latur to the extent of 5 H 34 R. On 16.02.2009, there was an agreement between the parties to sell the suit property to the plaintiff for amount of Rs.33,37,500/-. An earnest amount of Rs.37,500/- was also paid to the defendant. The transaction was to be completed after accepting the remaining amount. Since the defendant did not come forward for sale-deed the plaintiff on 25.01.2011 sent a notice asking for specific performance. The defendant replied notice saying that the plaintiff should come with amount and he was ready to execute the sale-deed. It is case of the plaintiff that though he received reply to his notice stating that the defendant is ready to perform his part of contract, however, before sending of the notice itself, the

defendant had transferred the suit land in favour of his wife and son i.e. defendant Nos.2 to 4. The plaintiff, therefore, issued another notice dated 11.02.2011 stating that the defendant should get land re-transferred in his name first, so that he can execute-sale-deed. In the said notice, it is further stated that the plaintiff can get sale-deed executed within three years.

04. The learned Trial Court on evidence, oral as well as documentary, held that the plaintiff was not ready and willing to perform his part of contract. This conclusion is based upon second notice dated 11.02.2011. Though the defendant has never refused specific performance, still the plaintiff put a condition on the defendant to get the land re-transferred in his name first. The said finding is also confirmed by the learned District Judge in appeal. The Trial Court partly decreed the suit directing to refund the earnest amount to the plaintiff by his judgment and order dated 23.07.2013 in Special Suit No.4 of 2012. Both the parties to the suit

challenged the said judgment and order. The defendant challenged the judgment to the extent of direction to refund the amount. The plaintiff filed appeal to the extent of refusal to grant specific performance. The learned District Judge after hearing the parties confirmed the judgment passed by the learned Trial Judge by his judgment dated 26.04.2022 dismissed both the appeals.

05. The learned Advocate for the appellant has produced on record copy of agreement to sell and copy of second notice dated 11.02.2011. From para 2 of the notice, it is seen that condition was put that defendant shall get the land transferred in his name first and thereafter intimate the plaintiff and it is thereafter the plaintiff would be ready to execute the sale-deed. He relied upon judgment reported in 2022 LiveLaw SC 375 in the case of P. Ramasubbamma Vs. V. Vijayalakshmi & Ors. In the said case, there was an agreement to sell the land. The vendor had accepted receipt of substantial

amount of consideration in advance. In that view it was held that the substantial amount of consideration was already paid. Nothing was required to be proved by the plaintiff and in that view specific performance was directed by the Hon'ble Apex Court. In this case, it is seen that if the plaintiff was ready to execute the sale-deed, it was for him to tender the amount and get the sale-deed executed. How to execute sale-deed was for the defendant. He may have asked his wife and sons to execute the sale-deed in favour of the plaintiff. By putting condition to get the land re-transferred first and then only to pay the amount shows that the plaintiff had put some condition showing that he was not immediately ready to perform his part of the contract. Further contents of notice shows that he even informed defendant that there was still three years period to do the transaction. This also shows that he was not ready immediately.

06. Findings of the Appellate Court or Trial Court cannot be faulted. This Court finds that this is

necessarily a finding of fact, which does not appear to be perverse. This Court, thus, holds that no case is made out to frame any substantial question of law. The appeal is, therefore, without merit and the same is dismissed with no order as to costs.

07. In view of disposal of the Second Appeal, pending Civil Applications do not survive and disposed off accordingly.

[KISHORE C. SANT, J.]