



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

29 APEAL FROM ORDER NO. 7 OF 2023

WITH

CIVIL APPLICATION NO. 5467 OF 2023  
IN AO/7/2023

NIRAJ PANDIT PATIL

VERSUS

CHINDHU HONA KOLI DECEASED THR LRS MARU CHINDHA  
KOLI DECEASED THR LRS TAIBAI MARU KOLI AND ORS

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Advocate for Appellant : Mr. Mayur G. Deokate – Through V. C.

Advocate for Respondent Nos.1A, 1B : Mr. R. C. Bora h/f

Mr. Shaikh Naseer.

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CORAM : S. G. MEHARE, J.

DATE : 18.12.2023

PER COURT :-

1. Heard finally by consent of the parties at the admission stage.
2. The appellant was the plaintiff, and the respondents were the defendants.
3. The plaintiff had filed a suit for specific performance of the contract. The Court of First Instance had decreed the suit. The defendants preferred the appeal. The First Appellate Court set aside the judgment and decree of the Court of First Instance and relegated the matter to the Court of First Instance for a

fresh trial, granting both sides an equal opportunity to lead the evidence and hearing.

4. Learned counsel for the appellant would submit that the First Appellate Court has mechanically passed the impugned judgment and order. The points for determination were not specifically framed. It being a last fact-finding court, the points for determination were essential. But, only two points were framed. Those were about the legality of the impugned judgment and decree and intervention by the said Court in the impugned judgment and decree. He would also argue that the First Appellate Court has apparently committed a mistake of law in holding that an agreement to sell immovable property scribed on a stamp of Rs.100/- is neither registered nor sufficiently stamped. He would also argue that no possession of the suit land was delivered on the basis of the agreement to sell. The plaintiff never claimed the protection of the possession under Section 53-A of the Transfer of Property Act. It was barely an agreement. Therefore, Section 34 of the Stamp Act has also been incorrectly applied. The impugned judgment and decree of the First Appellate Court was illegal and perverse. Hence, it is liable to be set aside.

5. Per contra, learned counsel for the contesting respondents would submit that the impugned judgment and decree of the First Appellate Court is correct. No harm is caused to the plaintiff if the suit is decided afresh. Apart from the inadmissibility of an agreement to sell for want of the requisite stamp, one of the defendants, Taibai, was not served with summons properly. They had a case that the agreement to sell was a bogus and fabricated document.

6. Order 41 Rule 31 of the Civil Procedure Code provides that the judgment of the First Appellate Court shall state the points for determination. Order 41 Rule 30 (2) provides that where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out, and it shall not be necessary for the Court to read out the whole judgment. The exact questions that arise in the appeal and require determination must be stated in the judgment. There is no quarrel that the First Appellate Court is the last fact-finding Court. If it is a court subordinate to the High Court, the First Appellate Court shall strictly follow the rules of the civil procedure code. The First Appellate Court has to re-appreciate the evidence and record his conclusions. The impugned

judgment and decree do not reveal that the First Appellate Court has framed the points for determination. He directly framed the issue that whether the judgment and decree impugned before it, is illegal, requires to be set aside, and further warrants interference at his hands. The form of the judgment of the First Appellate Court is apparently against Order 41 Rule 31 of the Civil Procedure Code. There is no discussion of the facts and the questions involved in the appeal. Unless the points for determination have been framed, it would be an incomplete judgment, particularly when the factual aspects were materially required to be considered. Considering the defence that the agreement to sell was a fabricated document, the First Appellate Court was to discuss the evidence on that material issue, but he directly recorded the finding that the impugned judgment and decree were illegal and that warrants interference. On this sole ground, the impugned judgment and decree of the First Appellate Court warrants interference at the instance of this Court.

7. Secondly, the First Appellate Court held that in view of the amendment in the Registration Act of the year 2001, it was compulsory to register the agreement to sell below Exh.17 as consideration was of Rs.2,40,000/-. Therefore, writing the

agreement to sell on Rs.100/- stamp is not sufficiently stamped. However, the unregistered document was used for collateral purposes. Apparently, the First Appellate Court appears to have erred in applying the rule of compulsory registration to the agreement to sell in which the possession was not handed over. Section 17(1)(a) of the Registration Act was amended by the Act of 48 of 2001 with effect from 24.09.2001. The said Section provides that the documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of said Section 53A of the Transfer of Property Act. Section 53-A of the Transfer of Property Act was also amended by the same Act 48 of 2001, which was brought into force with effect from 24.09.2001. By the said amendment, the words 'the contract, though required to be registered, has not been registered or' have been omitted from Section 53-A of the Transfer of Property Act. A person in possession of the immovable property by way of a contract, though required to

be registered, was not registered and was protected before the above amendment. The said amendment had taken such protection. On reading these two amendments together, it is clear that where a person in part performance of a contract takes the possession of the property and does not register such document, then such person in possession is not entitled to seek the protection of the possession under Section 53-A of the Transfer of Property Act. In simple words, where the possession of immovable property was obtained on the basis of an agreement to sell and if such an agreement is not registered as required by the amendment of Act 48 of 2001, the person in possession is not entitled to the protection from his dispossession. It seems that the First Appellate Court misread the amendments.

8. Section 54 of the Transfer of Property Act provides that a contract for sale does not itself create any interest in or charge on such property, which is agreed to be sold. Reading the above sections together, the Court considers that a mere agreement to sell executed on a stamp of Rs.100/- does not require registration as per Act 48 of 2001 inserted in the Registration Act, 1908.

9. Since the document i.e. an agreement to sell does not require compulsory registration, there is no question of paying the entire stamp duty as required under Section 34 of the Maharashtra Stamp Act. The First Appellate Court erred on facts as well as on law and passed the perverse judgment.

10. Learned counsel for the respondents would submit that the agreement to sell was fabricated. The parties led the evidence. However, no specific issue was framed. If it is so, the appellant/present respondent has an opportunity to raise the grounds before the First Appellate Court. The First Appellate Court has to examine the evidence led by the parties as well as the legality and correctness of the impugned judgment and decree of the Court of first instance.

11. For the above reasons, the Court is of the view that the impugned judgment and decree of the First Appellate Court warrants interference at the instance of this Court. Hence, the following order :

### **ORDER**

- (i) The appeal is allowed.
- (ii) The impugned judgment and decree of the learned District Judge-3, Bhusawal, passed in Regular Civil

Appeal No.06 of 2017, dated 28.06.2022, is quashed and set aside.

- (iii) The matter is remitted to the Court of the District Judge-3, Bhusawal, for a fresh decision purely on merit, granting opportunities to both sides.
- (iv) The parties are to appear before the District Judge-3, Bhusawal, on 23.01.2024.
- (v) Civil Application stands disposed of.

**(S. G. MEHARE, J.)**

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vmk/-