

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REJECTED CASE NO.2278 OF 2019
[SECOND APPEAL (ST) NO.18764 OF 2018]
WITH
REJECTED CASE NO.66 OF 2020
[SECOND APPEAL (ST) NO.18758 OF 2018]
WITH
INTERIM APPLICATION NO.24 OF 2020
IN
REJECTED CASE NO.2278 OF 2019
SECOND APPEAL (ST) NO.18764 OF 2018
WITH
REJECTED CASE NO.68 OF 2020
[CIVIL APPLICATION (ST) NO.19134 OF 2018]**

Shri. Sukhdeo Tukaram Jagtap ...Applicant/
Appellant

V/s.

Shri. Shivaji Dattatraya Jagtap ...Respondent

Mr. D. W. Bhosale, for the Applicant/Appellant.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 6th APRIL, 2023**

P.C.:

1. Heard Mr. Bhosale, learned counsel appearing for the Appellant.

2. The Appellant i.e. original Plaintiff in Regular Civil Suit No.162 of 2012 sought declaration that the agreement dated

7th December, 2007 executed in favour of the present Respondent be declared as null and void as it has been obtained by misrepresentation and by playing fraud. Before the said suit was filed, the Respondent has already filed Regular Civil Suit No.82 of 2012 seeking specific performance of said agreement dated 7th December, 2007.

3. Mr. Bhosale, learned counsel appearing for the Appellant submitted that the substantial question of law involved in this Second Appeal is that, both the learned Courts have completely ignored that the said agreement was executed as a result of fraud/misrepresentation.

4. However, perusal of the judgment and decree of the learned Trial Court as well of the learned First Appellate Court show that the Respondent has examined the witnesses of the documents to prove the execution of said agreement dated 7th December, 2007. The said witnesses have been extensively cross-examined and both the learned Courts by appreciating the evidence on record have recorded a finding that, nothing has been brought on record in the said cross-examination to point out that, the evidence regarding execution and registration of agreement dated 7th December,

2007 can be disbelieved.

5. The only contention raised is that, the Appellant has purchased the suit property from earlier owner for Rs.1,62,000/- and the same was allegedly sold to Respondent for Rs.1,20,000/- and, therefore, it is the contention of Mr. Bhosale that fraud has been played or the agreement was executed by the Appellant due to misrepresentation. However, both the learned Courts have very elaborately considered the said aspect of the matter. It has been held that, although, it is generally correct that, the prices of immovable properties increases, however, sometimes there can be decrease also in the prices of immovable properties. Apart from that, the learned Courts have considered that when the Appellant has purchased the suit property for Rs.1,62,000/- at that time, standing sugar cane crop of Rs.50,000/- to Rs.60,000/- was available at the suit land. Therefore, by taking into consideration the said aspect, the learned Courts have come to the conclusion that, even the Appellant has also purchased the said property for about Rs.1,20,000/- and recorded a finding that there is no fraud or misrepresentation.

6. In any case, by appreciating the evidence on record, both the learned Courts have concurrently held that, the Appellant has failed to prove fraud or misrepresentation.

7. Mr. Bhosale, learned counsel appearing for the Appellant has not pointed out anything to show that, the said finding is contrary to the evidence on record. Therefore, there is no substance in the above Second Appeals.

8. The Second Appeals are dismissed, however, with no order as to costs.

9. In view of dismissal of the Second Appeals, nothing survive in the Civil/Interim Application(s) and the same are also dismissed.

[MADHAV J. JAMDAR, J.]