

Nikita

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

**SECOND APPEAL NO.489 OF 2023
WITH
INTERIM APPLICATION NO.14212 OF 2023
IN
SECOND APPEAL NO.489 OF 2023**

Ashitosh Vinayak Gade and Anr. ... Appellants
V/s.
Sachin Babanrao Chavan and Ors. ... Respondents

Mr. Nikhil Wadikar i/b Mr. Nandu Pawar for the
Appellant-Applicant.

Mr. Suresh Sabrad i/b Mr. Jitendra Ramugade for
Respondent No.1

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 14, 2023

PC.:

1. The appellants are original defendant Nos. 6 and 7, who are purchasers of the suit property. The respondent No.1-original plaintiff filed a suit for specific performance of agreement to sale dated 11 February 2010. Total agreed consideration was Rs.2,96,000/-. Plaintiff paid Rs.1,50,000/- on the date of agreement to sale. As per the terms of the agreement sale deed was to be executed within one month from the demarcation of the property. On 21 May 2011, there was quarrel between the plaintiff

and defendant Nos. 1 to 5, resulting into filing of criminal complaint. On 18 January 2011, defendant Nos. 1 to 5 sold the said property in favour of defendant Nos. 6 and 7 for consideration of Rs.1,75,000/-. The plaintiff therefore, filed regular Civil Suit No.168 of 2012 seeking specific performance of agreement dated 11 February 2010, declaration that sale deed executed by defendant No.1 to 5 in favour of defendant No.6 and 7 as not binding and for possession of suit property.

2. The defendant Nos. 1 to 5 contested the suit by contending that the plaintiff was not ready and willing to perform his part of the contract and, therefore, executed sale deed of suit property in favour of defendant Nos. 6 and 7. Amount of Rs. 1,50,000/- was paid by defendant Nos.6 and 7 to defendant No.1 in cash as defendant No.1 was in need of money. Therefore, plaintiff is not entitled to relief of specific performance.

3. The Trial Court framed necessary issues regarding readiness and willingness of the plaintiff and extinguishment of agreement by repaying of amount of Rs.1,50,000/- by defendant No.1 to 5. Issue regarding defendant Nos. 6 and 7 being bona fide purchaser of the suit property was also held. The Trial Court recorded finding in favour of the plaintiff and decreed the suit. The Appellate Court dismissed the appeal, therefore, defendant No.6 and 7 (purchasers) have filed present Appeal.

4. The learned advocate for the appellant submitted that the Courts below were not justified in recording a finding of readiness and willingness in favour of the plaintiff as from the averment of

the plaint, it is clear that plaintiff waited for nine months after fight between the plaintiffs and defendant Nos. 1 to 5 which resulted in filing of criminal complaint. There is no evidence produced on record by the plaintiff that he was having balance amount of consideration.

5. On perusal of record it is evident that, the plaintiff has proved execution of agreement to sale. It is also proved that plaintiff paid Rs.1,50,000/- out of Rs.2,96,000/-. It is not in dispute that sale deed was to be executed after demarcation of the suit property. No evidence was placed on record by the defendant about the demarcation of the suit property before filing suit.

6. It is well settled that the factum of readiness and willingness to perform his part of contract needs to be adjudicated with reference to conduct of the part and attending circumstances. In the facts of the case, in the absence of specific order by the Court to deposit balance amount of consideration, it was not necessary for the plaintiff to deposit balance amount of consideration. Moreover, 50% of the consideration was paid on the date of execution of the agreement to sale. Plaintiff filed suit within nine months from the date of fight between the plaintiff and defendant Nos. 1 to 5. No evidence is adduced by the defendant that he called upon plaintiff either before execution of sale deed in favour of defendant Nos. 6 and 7 or thereafter, till filing of suit calling upon plaintiff to pay balance amount of consideration. The plaintiff issued notice on 25 May 2011 to execute the sale deed. The suit is filed on 18 February 2012. Therefore, in my opinion, finding recorded by the Courts below that plaintiff was ready and

willing to perform his part of the contract is based on admissible material. Sufficiency of evidence as no ground to raise substantial question of law. Both the Courts below recorded a finding of fact that the plaintiff was ready and willing to perform his part of the contract.

7. Therefore, no substantial question of law arises for consideration.

8. The second appeal stands dismissed. No costs.

9. In view of dismissal of second appeal interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)