

varsha

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

**SECOND APPEAL NO. 104 OF 2015
WITH
CIVIL APPLICATION NO. 229 OF 2015
IN
SECOND APPEAL NO. 104 OF 2015**

Ratnappa Bhujappa Kamble ...Appellant/Applicant
(D/H)

Versus

Smt. Laxmi Ramu Shelale (D/H) ...Respondents

Mr. Shrikrishna R. Ganbavale, Advocate for the Appellant.

CORAM : GAURI GODSE, J.

DATE : 4th DECEMBER 2023

P.C. :

1. This appeal is preferred by the original plaintiff for challenging the concurrent judgment and decree refusing the grant of decree for a specific performance of the contract. The appellants are heirs and legal representatives of the original plaintiff.

2. The suit was filed for specific performance of an agreement for sale dated 9th August 1991, executed by the defendant for

consideration of Rs. 1,15,000/-. It was contended by the plaintiff that the amount of Rs. 25,000/- was paid by way of earnest amount. So far as the execution of the agreement and payment of the earnest amount is concerned, the same is accepted by both courts. However, the contention of the plaintiff of being in possession in lieu of the agreement is not accepted. Both the courts have concurrently held that the time for performance of the agreement was one month as per the agreement for sale. The courts have also held that the appellant had made an alteration and addition to the agreement for changing the words and adding a line in the agreement of handing over of possession.

3. So far as readiness and willingness on the part of the plaintiff is concerned, the same is held against the plaintiff and prayer for specific performance is refused. Since, the payment of an earnest amount of Rs. 25,000/- is accepted by both the courts, alternative prayer for refund of the earnest amount is granted by the trial court with an interest of 9%. The said judgment and decree is confirmed by the First Appellate Court.

4. Both the courts have, thus, concurrently recorded findings of facts regarding the execution of the agreement, payment of the earnest amount, and readiness and willingness to perform the contract within a period of one month with respect to payment of the balance consideration amount.

5. Learned counsel for the appellant, though sought to make submissions with respect to the performance on the part of the appellant and his entitlement to seek specific performance, learned counsel was unable to point out any substantial question of law that would be required to be decided in the appeal. Submissions made on behalf of the appellant would require re-appreciation of the facts and evidence which is not permissible under section 100 of the Civil Procedure Code, 1908.

6. On perusal of the reasons recorded by both the courts, I do not find any infirmity or illegality in the same. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

7. In view of the dismissal of the second appeal, pending civil application does not survive and same is dismissed.

GAURI GODSE, J.