

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 463 OF 2016

ALONGWITH

CIVIL APPLICATION NO. 941 OF 2016

IN

SECOND APPEAL NO. 463 OF 2016

Abdul Aziz Mohamad Yusuf & Ors.

**..... Appellants/
Applicants**

VERSUS

Tokarshi Devraj Gada & Ors.

..... Respondents

Mr.Nikhil Pujari i/b. Mr.Pramod N.Joshi for the Appellant.

Mr.N.R.Bubna for the Respondent No.1.

CORAM: RAJESH S. PATIL, J.

DATE : 18th DECEMBER, 2023

P.C. :-

This second appeal challenges the concurrent findings recorded by the Civil Judge, Senior Division, Malegaon in Special Civil Suit No. 84 of 2008, by its judgment and order dated 12 December, 2011 and as confirmed by the District Judge, Malegaon in Civil Appeal No. 27 of 2012, by the judgment and order dated 19 December, 2015.

2. The appellant is the original defendant in the suit filed by the respondent. The dispute pertains to two blocks being Block Nos. 3 and

4 in CTS No. 1537, situated in municipal limits of Malegaon.

3. There was an Agreement for Sale dated 17 July, 2006 between the plaintiff and the defendant as regards to block nos. 3 and 4 (for short “the suit blocks”). The said Agreement for Sale is a registered document. The plaintiff had issued notice as according to the plaintiff, there was non compliance on the part of the defendant.

4. Hence, the plaintiff filed a suit for specific performance. The defendant filed his written statement. However, they denied that they had agreed to sale the suit blocks to the plaintiff for a consideration. It was further submitted in the written statement that the agreement for sale was in Marathi language, which is unknown to the defendant and therefore they do not know the contents of the agreement for sale. They further submits that the plaintiff did not handover the possession of the tenanted premises, the defendant could not built new construction. Hence, the question of handing over new premises to the plaintiff did not arise.

5. The plaintiff examined himself, attesting witness Mr.Jafer Sadik

Abdul Halim Kadri and Mr.Javed Ahmed Mohammad Bashir, an Engineer and also one more witness Mr.Shashikant Tokarshi Gada who was the attesting witness of the Agreement for Sale.

6. The Trial Court after recording the evidence and hearing the parties by its judgment and order dated 19 December, 2005 decreed the Special Civil Suit No. 84 of 2008 and directed the defendant to execute the sale deed in favour of the plaintiff.

7. The defendant being dissatisfied with the judgment and order dated 19 December, 2005 filed Civil Appeal No. 27 of 2012 before the District Court, Malegaon. The first appellate Court after hearing the parties by its judgment and order dated 19 December, 2015 dismissed the appeal filed by the original defendant.

8. The present second appeal challenges the concurrent findings recorded by both the Courts viz. Trial Court and the First Appellate Court.

9. Second Appeal has been filed in the year 2016 and is pending for

admission for last seven years.

10. It is submitted before me that since the plaintiff did not vacate the tenanted premises, the defendant is not in a position to construct the entire building as few more tenants had not vacated the tenanted premises and hence the defendant could not construct the new premises. It is also submitted that only after the old premises was demolished, a new building could be constructed and thereafter the defendant landlord could apply to the Corporation for granting occupation certificate.

11. I have heard learned counsel by both sides and have considered the documents on record.

12. In the Agreement for Sale, in the last paragraph it has been mentioned that the agreement was read over to the parties and they have signed it after understanding the contents. Therefore, the defence raised by the defendants that they do not understand Marathi language has no merits. This itself shows the ulterior motives of the defendants. The agreement has been executed in the year 2006 and execution of the

agreement has been denied by the defendants only after two years when they received notice of the plaintiff. The said notice's only demands more money from the plaintiff. The defendants have not filed any suit or declaration for cancellation of agreement. The parties who alleges fraud, have to establish the same. The defendants have failed to establish and there was any fraud played on them. The DW-1 has admitted that he has not complained about the price mentioned in the agreement. The fact that the Agreement for Sale is registered, has always a presumptive value in law. The defendant has failed to prove that any kind of fraud was played on him.

13. As per the clause 4-B the construction cost was fixed at Rupees Two Lakhs and responsibilities was imposed upon defendants to obtain permission from the competent authority. The new blocks have already been constructed, and are admittedly occupied by the defendant/landlord himself. The appellant/defendants were not able to show any clause in the agreement which mentioned that plaintiff will handover possession to defendant so that construction can be started. So also there is no reference in the agreement that all tenants have to vacate for construction to be completed. Admittedly part of the

building in which the plaintiff was promised to get blocks is ready. Therefore, in my view once the construction is complete the subject block no. 3 and 4 should have been handed over to the plaintiff. The defendant/landlords were not able to show any reasons to interfere with the concurrent findings.

14. No cases is made out to show any substantial questions of law, arises in this Second Appeal, therefore, Second Appeal is dismissed. No costs.

15. All civil applications also stand disposed of.

[RAJESH S. PATIL, J.]