

Nikita

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

**SECOND APPEAL NO.261 OF 2023
WITH
INTERIM APPLICATION NO.3435 OF 2023
IN
SECOND APPEAL NO.261 OF 2023**

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KAILAS
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Renu Navin Singh

... Appellant

V/s.

M/s. Allied Construction and Ors.

... Respondents

Mr. Sandesh Patil i/b Chintan Shah for the Appellant.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 14, 2023

P.C.:

1. The appellant is original defendant in Special Civil Suit No.671 of 2022. The respondent No.1 filed the suit seeking relief of declaration that the agreement dated 6th December 1996 and 4th February 2000 executed in favour of appellant by plaintiff be declared to be cancelled. Further declaration is sought that the appellants have no right at the interest in the suit shop and injunction restraining appellant from creating third party rights. Decree for possession of suit premises is also sought.

2. The appellant filed written statement contending that the plaintiff executed agreement as per provisions of Maharashtra Ownership Flats (Regulation of the Promotion of the Construction, Sale, Management and Transfer) Act, 1963. Total agreed

consideration for suit shop was of Rs.20,05,000/-. Defendant paid Rs.15,00,000/- by cheque. He denied that such cheque was dishonoured. Balance consideration of Rs.3,30,000/- was not paid as completion certificate was not obtained by the plaintiff. Plaintiff mischievously avoided to register document of agreement to sale which is an offence under Section 13 of Maharashtra Ownership Flats (Regulation of the Promotion of the Construction, Sale, Management and Transfer) Act, 1963. In the additional written statement, defendant raised defense that agreement executed in her favour is valid and substantive.

3. The Trial Court framed issues regarding payment of consideration by defendant to the plaintiff. It also framed issue of breach of agreement dated 6th December 1996 and supplementary agreement and issues as to whether the plaintiff is entitled to get possession. The Trial Court dismissed the suit holding that the defendant failed to prove entire consideration paid to the plaintiff as per agreement. The Trial Court held that possession of the appellant cannot be on the ground that plaintiff has remedy to file suit for recovery of unpaid purchase price of suit shop and appellant deserves to be protected by virtue of agreement dated 6th December 1996 and supplementary agreement dated 4th February 2000.

4. The plaintiff filed appeal before the District Court. The District Judge allowed the appeal holding that the agreement of sale executed by plaintiff in favour of defendant (appellant) were unregistered document. Defendant failed to pay total consideration of Rs.20,00,000/- and the defendant is not entitled to claim

defense of part performance.

5. I have heard learned advocate for the appellant. According to him, the defendant is entitled to the benefit of agreement entered into between the parties as per the provisions of Maharashtra Ownership Flats (Regulation of the Promotion of the Construction, Sale, Management and Transfer) Act, 1963. The findings recorded by the Appellate Court that Rs.15,00,000/- was not paid is perverse. According to him proper remedy is to file suit for recovery of balance amount.

6. I have considered submissions. On perusal of the plaint, it appears that apart from claiming declaration that the agreement to sale executed between the parties stands cancelled, plaintiff's claimed possession of property. Plaintiff's ownership over the suit shop was not in dispute, atleast on the date of execution of the agreement to sale. Question, therefore, arises for consideration is whether by virtue of agreement to sale and supplementary agreement, title of the suit property passed in favour of defendant. There is no recital in the agreement which confers ownership on the defendant. The defendant, therefore, cannot claim ownership over the suit shop. It is not in dispute that the agreement to sale in question is unregistered. The defendant, therefore, cannot claim of transfer of ownership passed on unregistered suit.

7. There is no pleading in the written statement nor the Courts below have framed issue regarding defendants protection under Section 53 (A) of the Transfer of property Act, 1882.

8. No other provision of statute or contract is brought to the

notice to suggest that defendant is entitled to protection of his possession. Therefore, in absence of registered instrument transferring ownership of suit shop, plaintiff being owner of the property is entitled to a decree of possession. The Appellate Court was, therefore, rightly decreed plaintiffs suit. No substantial question of law arises for consideration.

9. The second appeal stands dismissed. No costs.

10. In view of dismissal of second appeal, the interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)