

Nikita

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

SECOND APPEAL NO.354 OF 2019

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Jiwan Kumar Chandanmai Soni ... Appellant
V/s.
Kashinath Gangaram More and Anr. ... Respondents

**WITH
CIVIL APPLICATION IN SECOND APPEAL NO.770 OF 2019
IN
SECOND APPEAL NO.354 OF 2019**

Jiwan Kumar Chandanmai Soni ... Appellant
V/s.
Kashinath Gangaram More and Anr. ... Respondents

Mr. Manish N. Jain a/w Ritu G. Gehlot i/b S.M. Jain
and Associates for the Appellant.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 7, 2023

P.C.:

1. The appellant is original plaintiff who filed Special Civil Suit No.661 of 2006, seeking relief of possession, injunction, restraining defendants from creating third party rights or partying with possession and the declaration that the agreement executed by defendant No.1 in favour of defendant No.2 be declared as null and void.

2. The plaintiff filed such suit based on averment that on 22nd February 2005, defendant No.1 executed agreement to sale in favour of plaintiff. According to plaintiff, the agreement of sale was registered on 20th September 2006, according to him, total consideration of Rs.6,50,000/- was paid to the defendant No.1. Despite execution of such document, defendant No.1 executed agreement in favour of defendant No.2. Hence, he filed the suit.

3. The Courts below framed issue casting burden on the plaintiff to prove his ownership over the suit property.

4. On perusal of the record, it appears that the agreement dated 22nd February 2005 was an agreement to sale which does not confer title on plaintiff. However, the plaintiff unilaterally prepared a declaration regarding such agreement to sale and presented such declaration before the registering authority. Such unilateral Course of filing declaration is impermissible under the provisions of the Indian Registration Act, 1908. The executant of document needs to remain present before the registering Officer and it is only upon such document being presented and registered by the vendor. The process of registration can be proved under the provisions of Indian Registration Act, 1908.

5. In the facts of the case, the Courts have rightly recorded a finding that the plaintiff cannot claim ownership based on agreement to sale which is a notarized document. In absence of proof of title, Courts below have rightly dismissed the suit of the plaintiff seeking declaration regarding agreement executed by defendant No.1 in favour of defendant No.2 to be void. There is no

substantial question of law involved.

6. The second appeal is dismissed. No costs.

7. It is made clear that if permissible in law, the plaintiff is at liberty to file a suit for recovery of amount paid to defendant No.1.

8. In view of dismissal of second appeal, civil application does not survive. The same stands disposed of.

(AMIT BORKAR, J.)