

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

**SECOND APPEAL NO.488 OF 2022
WITH
INTERIM APPLICATION NO.10191 OF 2022
IN
SECOND APPEAL NO.488 OF 2022**

Balaram Shantaram Parkar ...Applicant

Versus

Mrs. Suvarna Ramesh Gudekar ...Respondent

...

Mr. Amod Eklaspur with Ms Dhanashree Gaikawai i/b. M/s. Bilawala and Co. for the Applicant.

Mr. Sagar G. Talekar for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 8th NOVEMBER, 2023.

P. C. :-

1. By this second appeal, under Section 100 of the CPC the Appellant, who was the Defendant in the suit has challenged the judgment and order dated 04/03/2022 passed by the Extra Joint District Judge, and Additional Sessions Judge, Mangaon-Raigad in Regular Civil Appeal No.40 of 2016. By the impugned judgment, the learned District Judge dismissed the appeal filed by the Appellant herein and confirmed the judgment and decree dated 18/01/2016 passed by the learned Civil Judge, Junior Division, Mangaon, in

Regular Civil Suit No.50 of 2011.

2. The dispute is in respect of dwelling house No.405(214) admeasuring 338 sq.meter, situated at Chinchavali Wadi, Mangaon, District-Raigad. The said house shall be hereinafter referred to as 'the suit premises'.

3. The Appellant is the Defendant and Respondent is the Plaintiff in the suit and shall be hereinafter referred to as 'Defendant' and 'Plaintiff' respectively. The Plaintiff and her husband were admittedly the owners of the suit premises. The Plaintiff claims that she was unwell and she alongwith her children shifted to Indapur. She has stated that her husband was alcoholic. Taking undue advantage of the said fact, the Defendant trespassed into the suit premises. Her husband died on 29/06/2004. The Plaintiff called upon the Defendant to handover possession of the suit premises. However, he claimed that he had purchased the same. The Plaintiff called upon the Defendant to furnish her the relevant documents and /or to vacate the premises. The Defendant failed to furnish the documents and refused vacate the premises and hence the suit came to be filed for recovery of possession.

4. The Defendant claimed that he had entered into an agreement dated 06/12/1995 and agreed to purchase the suit premises for sale consideration of Rs.30,000/-. He has stated that he was always ready and willing to complete the sale transaction. The Defendant raised a counter claim seeking specific performance of the sale agreement dated 06/12/1995.

5. The learned Trial Judge framed the issues and upon considering the evidence adduced by the respective parties has recorded a finding that the Plaintiff is the owner of the suit premises. The learned Judge has also observed that the Defendant has failed to prove that he had entered into an agreement for sale with the husband of the Plaintiff and further that the Defendant was ready and willing to perform his part of the contract. Hence, the learned Judge decreed the suit and dismissed the counter claim filed by the Defendant. Being aggrieved by the said judgment and decree the Defendant filed an appeal before the first Appellate Court.

6. The learned Judge has confirmed the findings that the Plaintiff is the owner of the suit premises. The learned Judge also

recorded a finding that the Defendant has failed to prove the agreement for sale dated 06/12/1995 or that he was ready and willing to perform his part of the contract and hence dismissed the appeal. Being aggrieved by this judgment and order, the Defendant has filed this appeal under Section 100 of the CPC challenging the concurrent findings rendered by the Courts below.

7. It is not in dispute that the Plaintiff is the owner of the suit premises. The Defendant claims right to the suit premises by virtue of an unregistered agreement dated 06/12/1995. The Defendant has failed to prove execution of the agreement and payment of sale consideration. Be that as it may, undisputedly, the Defendant had failed to seek enforcement of the agreement for over 15 years and consequently failed to prove that he was ready and willing to perform his part of the contract. The Defendant has not been able to show that he has any right, title or interest to continue to be in possession of the suit premises. Under the circumstances, the findings recorded by the courts below are not perverse and do not warrant interference. No substantive question of law is involved. Hence, the appeal is dismissed.

8. In view of dismissal of the appeal, the interim application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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