

Harish

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

**SECOND APPEAL NO.623 OF 2022
WITH
INTERIM APPLICATION NO. 18107 OF 2022
IN
SECOND APPEAL NO.623 OF 2022**

Smt. Yamunabai Namdeo Wagh & Ors.	...Appellants/ Applicants
Versus	
Dayaram Shrawan Shewale	...Respondent

Mr. Jayendra D. Khairnar, for the Appellants/Applicants.
Ms. Pooja Malik a/w Mr. N. R. Bubna, for the Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATE : 13th JUNE, 2023

P.C.:

1. Heard Mr. Khairnar, learned counsel appearing for the Appellants and Ms. Malik, learned counsel appearing for the Respondent.

2. The present Second Appeal is filed by the Original Defendant, challenging the legality and validity of the Judgment and Decree dated 7th February, 2013 passed by learned Jt. Civil Judge, Senior Division at Malegaon, District Nashik in Special Civil Suit No. 18 of 2012 as well as the Judgment and Decree

dated 11th August, 2022 passed by the learned District Judge-2 Malegaon in Regular Civil Appeal No. 39 of 2013. The said Special Civil Suit No. 18 of 2012 was filed by the Plaintiff i.e. present Respondent for specific performance of agreement dated 3rd July, 2008. The said suit was filed on 19th January 2012 i.e. within limitation from the date of the termination of the agreement by notice dated 20th May 2010.

3. It is admitted position that, the said agreement of sale dated 3rd July, 2008 is a registered agreement and the consideration is shown to be Rs. 8,10,000/-. It is also admitted position that, the entire consideration has been paid by the Plaintiff to the Defendants i.e. present Appellants on or about 3rd July, 2008.

4. Both courts have concurrently held that, the plaintiff has proved his readiness and willingness and that notice dated 20th May 2010 of termination of suit agreement is not issued by the Defendants for justified reasons. Therefore the learned Trial Court has decreed the suit and the learned Appellate Court confirmed the said decree by dismissing the Appeal.

5. The only contention of Mr. Khairnar, learned counsel appearing for the Appellants that, the suit land was allotted to the Appellants as per section 27 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as

“the said Act”). He submitted that, the late husband of Defendant No. 1, also the late father of Defendant Nos. 2 and 3 was a serviceman and therefore the land was allotted to them as per section 27(5)(iii) of the said Act. He therefore submitted that, as per the restriction under section 29(3) of the said Act, any transfer or division of the land in contravention of sub-section (1) or sub-section (2) shall be invalid; and as a penalty therefor, any right, title and interest of the transferor and transferee in or in relation to such land shall, after giving them an opportunity to show cause, be forfeited by the Collector and shall without further assurance vest in the State Government. Section 29 which is the relevant section reads as under :-

“29.(1) Without the previous sanction of the Collector, no land granted under section 27 or granted to a joint farming society under section 28, shall be—

(a) transferred, whether by way of sale (including sale in execution of a decree of a civil court or of an award or order of any competent authority) or by way of gift, mortgage, exchange, lease or otherwise; or

(b) divided whether by partition or otherwise, and whether by a decree or order of a civil court or any other competent authority,

such sanction shall not be given otherwise than in such circumstances, and on such conditions including

condition regarding payment of premium or nazarana to the State Government, as may be prescribed :

Provided that, no such sanction shall be necessary where land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in sub-section (4) of section 36 of the Code for raising a loan for effecting any improvement of such land]

(2) If sanction is given by the Collector to any transfer or division under sub-section (1) subsequent transfer or division of land shall also be subject to the provisions of sub-section (1).

(3) Any transfer or division of land, and any acquisition thereof, in contravention of sub-section (1) or sub-section (2) shall be invalid; and as a penalty therefor, any right, title and interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector and shall without further assurance vest in the State Government.”

6. Perusal of Section 29 clearly shows that what is contemplated under section 29 is transfer, whether by way of sale (including sale in execution of a decree of a civil court or of an award or order of any competent authority) or by way of gift, mortgage, exchange, lease or otherwise is not permissible with

respect to the land granted under section 27, without the previous sanction of the Collector. In the present case, the suit has been filed for specific performance of the agreement of sale dated 3rd July, 2008. It is the settled legal position that, the agreement of sale does not confer any title and therefore the said restriction is not at all applicable to the suit agreement.

7. In any case, it is significant to note that, by Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2018 which has come into effect from 15th December, 2018, no such land can be forfeited by the Collector for contravention of the provisions of sub-section (1) or sub-section (2) of section 29 if the transferee makes the payment of such amount as the State Government may, by order published in the official Gazette, specify. Therefore there is no substance in the contention of Mr. Khairnar, learned counsel appearing for the Appellant.

8. Admittedly, the suit agreement is registered agreement of sale dated 3rd July, 2008. It is admitted position that, the entire consideration of Rs. 8,10,000/- has been received by the late husband of Defendant No. 1, also the late father of Defendant Nos. 2 and 3. Both the learned Courts have concurrently held that, the reasons mentioned in the notice dated 20th May, 2010 for cancellation of the agreement are not tenable. The recitals in the agreement show that, certain objections were raised regarding

some other transaction which has nothing to do with the suit transaction and another clause provides that, if sanction/permission is not obtained from the Collector as provided under section 29 of the said Act within a particular time limit, then the agreement stands terminated. However, this is a case where the entire consideration has been received by the Defendants. Apart from that, as per the settled legal position, the suit for specific performance can be decreed subject to the sanction by the Collector. Therefore, both the courts have rightly held that, the reasons mentioned for termination in suit notice dated 20th May, 2010 are totally unreasonable and not valid.

9. Therefore there is no substance in the substantial question of law raised by Mr. Khairnar. The Second Appeal is accordingly dismissed with no order as to costs.

10. In view of dismissal of Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)