

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.425 OF 2022

WITH

INTERIM APPLICATION NO.831 OF 2019

IN

SECOND APPEAL NO.425 OF 2022

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Jainam Developers Builder and Developer ...Appellants/
Partnership Firm Palghar & Ors. Applicants

V/s.

Smt. Anita Durgeshkumar Agrawal ...Respondent

Mr. K. L. Vyas, for the Appellants/Applicants.

Mr. Sanjiv Sawant a/w Abhishek Matkar & Malhar
Bageshwar, for the Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATE : 27th FEBRUARY, 2023

P.C.:

1. Heard Mr. Vyas, learned counsel appearing for the
Appellants and Mr. Sawant, learned counsel appearing for
the Respondent.

2. Mr. Vyas submitted that following substantial questions
of law are involved in this Second Appeal :-

i) Whether learned courts below are
justified in granting a decree of specific
performance of contract in respect of suit shop

no. P-2/143 when the terms and conditions of alleged agreement of contract were never reduced into writing, when same were never specified and proved by respondent plaintiff to the satisfaction of judicial conscious?

ii) Whether learned courts below are justified in holding that the parties to the suit entered into an agreement of sale in respect of shop No. P-2/143 when it is the specific contention of the Plaintiff/Respondent that agreement of sale was reduced into writing but failed to produce the same in the evidence?

3. It is the contention of Mr. Vyas, learned counsel appearing for the Appellants that, the terms and conditions of alleged agreement of contract with respect to the suit shop No. P-2/143 were never reduced in writing and they were not specified and, therefore, both the Courts have erred in passing the decree of specific performance.

4. It is his submission that, as the terms and conditions are not reduced into writing, satisfaction of the Court that, Plaintiff is ready and willing to perform his part of contract,

cannot be recorded.

5. It is his further contention that, the Plaintiff has come with case that, agreement to sale was reduced into writing but failed to produce the same in evidence and, therefore, adverse interference is required to be drawn against the Plaintiff.

6. The factual position on record clearly shows that, there are two separate agreements. One agreement is dated 14.12.2010 with respect to the shop No. P-02/43 admeasuring about 336 sq. ft. built up area situated at ground floor and consideration of the said shop was Rs.12,00,000/-. It is undisputed position that, as far as the said agreement to sale dated 14.12.2010 regarding shop No. P-02/43 is concerned the said agreement is in writing, the same was executed by both the parties, the same was registered and entire consideration of Rs.12,00,000/- under the said agreement is paid. The dispute in the present proceeding is with respect to agreement regarding Gala/Shop No.P-02/143 (“**suit shop**”) admeasuring about 336 sq.ft. built up area which is situated exactly above the shop No. P-02/43. Both the Courts have concurrently found that, the Plaintiff

has agreed to purchase the said shop for sum of Rs.8,00,000/-. Accordingly, entire payment of Rs.8,00,000/- has been made. Learned counsel appearing for the Appellants has also candidly accepted that the Appellants have received total amount of Rs. 20,00,000/-. Therefore, the payment of Rs.8,00,000/- as consideration towards suit shop in addition to payment of Rs.12,00,000/- towards shop No. P-02/43 is admitted. However, it is the contention of the Appellants that, there are other monetary transactions between the parties and the said Rs.8,00,000/- is part of said other monetary transactions and not relating to the said shop No. P-02/143 i.e. suit shop. The learned Trial Court as well as the learned First Appellate Court have recorded a finding that the Appellants have received said amount of Rs.8,00,000 for sale of suit shop. In view of concurrent finding recorded by both the Courts and as Appellants have failed to point out that, the said finding is recorded without considering the evidence on record, there is no substance in the first substantial question of law raised by Mr. Vyas. Mr. Vyas, learned counsel has failed to point out anything to contend that said finding is perverse or illegal.

7. As far as the second substantial question of law raised by Mr. Vyas, learned counsel it is the specific contention of the Plaintiff in the plaint that although entire payment of Rs.8,00,000/- is made the Appellant has failed to execute the agreement, register the same and give possession of the suit shop to the Plaintiff. The evidence of the Plaintiff is also consistent with the said pleadings. Therefore, there is no substance in the second substantial question of law raised on behalf of the Appellants.

8. Therefore, the Second Appeal is dismissed, however, with no order as to costs.

9. As the Second Appeal is dismissed, nothing survives in the Interim Application and the same is also dismissed.

10. At this stage, Mr. Vyas, learned counsel appearing for the Appellants seeks stay for a period of twelve weeks. However, both the Courts have concurrently found that, the Respondent-Plaintiff has paid entire amount of Rs.8,00,000/- in 2010 towards the purchase of suit shop. Therefore, no case is made out to grant stay and said request is rejected.

(MADHAV J. JAMDAR, J.)