

DATED : 18/04/2023

ORAL JUDGMENT

The present appeal is filed being aggrieved by the judgment and decree dated 05/10/2005 passed by 5th Adhoc Additional District Judge, Chandrapur (Appellate Court) in R.C.A. No. 42/2001.

2. This Court admitted the appeal on 28/02/2008, on the following substantial question of law:-

“Whether the Courts below fell in error in not directing the delivery of possession of the entire property including 8 acres of land when the plaintiff had informed that the contract stands terminated and the defendant did not file a suit for specific performance or counter claim for specific performance?”

3. The appellants and respondent no. 2 are the original plaintiffs and respondent no. 1 is the original defendant. Now, it is the case of the appellants that, the appellants and respondent no. 2 are the owners of Field Survey No. 31, Area 7.74 Hectares (19.5 Acres) of Agricultural Land, Muza: Ghotia (Karimbi), Tah. Rajura, Dist. Chandrapur. The appellants/plaintiffs have entered into an oral agreement for sale of part of aforesaid land

admeasuring 8 Acres to the original defendant/respondent no. 1 for valuable consideration of Rs. 24,000/- on 25/12/1988. The respondent no. 1/defendant paid only an amount of Rs. 12,000/- upto 25/11/1989 and not paid remaining amount till date. The respondent no. 1/defendant is in possession of the property agreed to be sold.

4. On 15/08/1995, S.D.O., Rajura granted permission to execute the sale deed which was duly communicated to respondent no. 1, however, he refused to pay the balance amount and till then has not got the Sale Deed executed. The respondent no. 1/defendant has also encroached upon the appellants' land admeasuring 19.5 Acres and is cultivating the same.

5. The plaintiff had filed a suit bearing R.C.S. No. 50/1998 on 14/08/1998 for possession, which came to be dismissed 24/01/2001 by the learned Trial Court (i.e. Jt. Civil Judge, Jr. Dn., Rajura). Therefore, the appellants/plaintiffs preferred an appeal bearing R.C.A. No. 42/2001. The learned Appellate Court set aside the impugned judgment and decree passed by the learned Trial Court and partly allowed the appeal. In the judgment passed by the learned Appellate Court, the

defendant was directed to deliver the vacant possession of land Survey No. 31 of Mouza Ghatta, excluding 8.00 Acres of eastern side land. An inquiry was also directed into the mesne profit under Order 20, Rule 12 of the Civil Procedure Code.

6. Heard learned counsel for the appellants. None for the respondents.

7. The learned counsel for the appellants vehemently submitted that, when there is a specific finding that the notice was duly received by the defendant and no reply is filed, it was incumbent on the part of learned Appellate Court even to direct the delivery of possession of 8.00 Acres of land. Learned counsel has also drawn my attention to the observations made by learned Trial Court as well as learned Appellate Court with regard to the admission on the part of the plaintiffs that, due to increase in the prices, they were not ready to execute the Sale Deed. In fact, in the evidence of Moh. Hussain who is the husband of plaintiff no. 3 was looking after all affairs of the plaintiffs and was having knowledge of the transaction, deposed that it is not true to say that the plaintiffs have denied to execute the Sale Deed as the prices are increased. Even if, the plaintiffs who are the Muslim

lady having no much knowledge about the trial, given in admission that due to increase in land, they denied for registration of sale deed, however, the admitted facts were overlooked by both the Courts below.

8. The learned Appellate Court in para 9 observed that-,

“it is an admitted fact between the parties that the respondent was put in possession of 8.00 Acres of land on eastern side out of survey no. 31 of Mouza Ghota, in pursuance of the oral agreement dated 25/12/1988. It is further not in dispute that thereafter, the defendant had paid Rs. 11,000/- towards part consideration and it was agreed to pay balance consideration of Rs. 12,000/- at the time of execution of a sale deed. After the payment of Rs. 11,000/- the plaintiffs and defendant had been to the office of Sub-Registrar, Rajura get a sale-deed executed. However, there they came to know regarding necessary permission. In consequent upon the said fact, a sale-deed could not be executed.”

9. The notice was issued on 20/7/1998 which is admitted by the defendant. However, there is no reply given to the said notice. By the said notice, the defendant were asked to remain present on 29/07/1998 before Sub-Registrar, Rajura and

get the sale deed executed by making the balance consideration of Rs. 12,000/-. It is the case of the defendant that, after receipt of notice, the defendant had been to the plaintiffs and made a request for extension of time to get a Sale Deed executed till the crop is harvested in November - December, 1998.

10. Learned Appellate Court further observed in para 19 that,-

“the sale deed could not be executed for want of permission from the Sub-Divisional Officer. It is also an admitted fact that the defendant had knowledge that subsequently the plaintiffs obtained permission from Sub-Divisional Officer, Rajura for selling 8.00 acres of land. Further, it is significant to note that the defendant and his witness have categorically deposed that after receipt of the notice, the defendant met the plaintiff for extension of time to get sale deed executed. It is further contention of the defendant that he had requested the plaintiffs to extend the time till harvest season of Novembe-December, 1998. However, thereafter, the defendant did not take any efforts and show his bonafide to get sale deed executed by making the payment of balance consideration of Rs. 12,000/-.”

11. While observing that, the plaintiffs avoided to execute a Sale Deed, the learned Appellate Court failed to

appreciate this fact that, there was no efforts made by the defendant to get the Sale Deed executed. He has not issued any notice nor filed any counter claim of suit for specific performance which clearly demonstrates that the defendants were not ready and willing to perform his part of contract.

12. There is no discussion made by learned Appellate Court in this regard. In view of the fact that, there is no efforts on the part of the defendant to get the sale deed executed, even it cannot be said that the defendant was ready and willing to perform his part of contract. In such circumstances, learned Appellate Court ought to have directed the defendant to deliver the possession of 8 Acres of land also which was agreed to be sold after the oral agreement. Without there being any prayer or relief claimed by the defendant for grant of specific performance, the learned Appellate Court held that,-

“Looking to the aforesaid situation, the defendant is at liberty to get a Sale Deed of 8.00 acres of land executed on making payment of balance consideration of Rs. 12,000/- as soon as it is possible to him.”

This is not permissible under the law. Relief which is not claimed cannot be granted.

13. The learned counsel for the appellants relied on ***Umabia and another V/s. Nilkanth Dhondiba Chavan (dead) by LRs. and another [(2005) 6 SCC 243]*** wherein it is held that,

“it is now well settled that the contract of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.”

14. The learned Appellate Court failed to appreciate this fact that, even if, it is presumed, the time was extended. However, the defendant was not precluded from taking any steps to get the sale deed executed after harvesting period. There is nothing on record to show that, he has made any attempt to get the sale deed executed. As such, in view of the notice, the contract was terminated. The judgment of learned Appellate Court is patently erroneous to the extent that, it has not directed the possession of 8 Acres of land also of which oral agreement was there. Accordingly, I answer the substantial question of law in affirmative and proceed to pass the following order:-

ORDER

- 1) The appeal is allowed.
- 2) The judgment and decree dated 05/10/2005 passed by learned Appellate Court i.e. 5th Adhoc Additional District Judge, Chandrapur in R.C.A. No. 42/2001 is hereby modified as under:-
 - a) The suit is decreed.
 - b) The defendant to deliver the vacant possession of the land Survey No. 31, Area 7.74 Hectares (19.5 Acres) of Agricultural Land at Mouza Ghotta (Karimbi), Tah. Rajura, District Chandrapur to the plaintiffs within two months from the date of judgment.
 - c) Inquiry into mesne profit be held under Order 20, Rule 12 of the Civil Procedure Code from the year 1994 till the delivery of possession of total land.
 - d) Decree be drawn up accordingly.
- 3) The appeal stands disposed of.

[SMT. M.S. JAWALKAR, J.]