

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Second Appeal No.97 of 2021

ANIL S/O DHARAMDAS GOTEKAR VS BABARAO S/O KRISHNAJI CHOUDHARI AND
ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

None for the appellant.

**CORAM : ANIL S. KILOR, J.
DATED : 09.02.2023**

1. None for the appellant.
2. In this second appeal, a challenge is raised to the concurrent findings recorded by both the Courts below that the sale deed executed by the respondent No.2/Ori. defendant No.1 in favour of the appellant/Ori. Defendant No.2, is illegal and not binding on the plaintiff/respondent No.1.
3. The brief facts of the present case are as under:

The plaintiff/respondent No.1 filed a suit for specific performance stating that on 27.10.2004 an agreement was executed between the plaintiff and the defendant No.1 and the price fixed for the suit property was Rs.2,01,001/- out of which Rs.51,001/- was paid at the time of agreement and he

was agreed that the balance amount will be paid on 27.10.2005 at the time of sale deed and thereafter, the defendant No.1 executed the sale deed dated 25.11.2005 in favour of the defendant No.2 therefore, the suit was filed for specific performance of contract as per the agreement dated 27.10.2004.

4. The learned trial Court, after examining the oral as well as documentary evidence, held that the plaintiff has proved that the defendant No.1 agreed to sell the suit property in favour of the plaintiff for total consideration of Rs.2,01,001/- and at the time of agreement, he accepted Rs.51,001/-.

5. It was further held that the defendant No.1 has breached the conditions of the agreement and the plaintiff was all the time ready and willing to perform his part of contract. It was also held that the defendant No.1 illegally sold out the suit property in favour of the defendant No.2 and therefore, the sale deed executed by defendant No.1 in favour of the defendant No.2 is not binding on the plaintiff. Accordingly, the learned trial Court decreed the suit and declared that the sale deed executed by the defendant No.1 in favour of the defendant No.2 is not binding on the plaintiff. The judgment was carried in the appeal namely Regular Civil Appeal No.204 of 2012, which came to be dismissed vide judgment and decree dated 08.06.2020, which is the subject matter of this second appeal.

6. Thus, admittedly, the defendant No.1 has not challenged the findings recorded against him to the effect that the defendant No.1 had breached the conditions of the agreement and though the plaintiff was all the time ready and willing to perform his part of contract, the defendant No.1 failed to execute the sale deed in favour of the plaintiff.

7. It is undisputable that the appellant is the subsequent purchaser and as such, unless the findings recorded by the both the Courts below against the defendant No.1 are not set aside, the defendant No.2 cannot get any relief in this matter, as no challenge is raised by the defendant No.1 to the judgment and decree passed by the trial Court.

8. Hence, as no substantial question of law involved in the present appeal, the second appeal is **dismissed**.

[ANIL S. KILOR, J.]