

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

SECOND APPEAL NO. 309 OF 2019

Smt. Kalawatibai Wd/o Dhondbaji
Meshram, Aged about 60 years, Occ.
Retired
R/o Plot No. 69, Mahatma Fule Nagar,
Nagpur

...Appellant

// VERSUS //

Arun S/o Domaji Bhute,
Aged about 53 years, Occ. Business
R/o Chitnispura Behind Police
Chowki, Mahal, Nagpur

... Respondent

Shri T.Rahul, Advocate for the appellant.

Shri A.D.Dangore, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 16th MARCH, 2023.

ORAL JUDGMENT :

This second appeal arises out of the judgment and decree dated 29th March, 2019 passed by the District Judge-5 and Additional Sessions Judge, Nagpur in Regular Civil Appeal No. 316 of 2016 dismissing the appeal and confirming the judgment and decree dated 28th January, 2016 passed by the Civil Judge, Senior Division, Nagpur in the Special Civil Suit No. 587 of 2007 decreeing the suit for specific performance of contract in favour of plaintiff.

2. The brief facts of the present case are as under : (The parties are referred to as per their status before the trial Court.)

The plaintiff/appellant preferred a suit bearing regular civil suit no. 587 of 2007 for specific performance of contract on the ground that the defendant entered into an agreement of sale of the suit property for consideration of Rs.5,75,000/- and the plaintiff paid Rs.1,00,000/- as earnest money to the defendant. It was agreed that the plaintiff would pay the remaining balance consideration at the time of execution of sale-deed, which was agreed to be executed within a year. Accordingly, agreement to sale was executed on 19th April, 2006.

3. It is the case of the plaintiff that the time and again the defendant was requested to execute the sale-deed, however, she avoided to execute the sale-deed and therefore the plaintiff issued notice to the defendant on 31st January, 2007 requesting her to execute the sale-deed after accepting the balance consideration. The notice was replied by making false allegations and therefore a suit was filed.

4. The defendant resisted the suit by filling written statement.

5. The learned trial Court after recording the oral evidence and after examining the same along with documentary evidence, decreed the suit in favour of the plaintiff, which was carried in appeal by the defendant. The learned Lower Appellate Court maintained the same by impugned judgment and decree, which is subject matter of the present appeal.

6. This Court vide order dated 3rd July, 2019 framed the following substantial questions of law:

i. Whether the respondent/plaintiff was able to point out before Courts below that he was ready and willing to perform his part of contract?

ii. Whether the Courts below were justified in shifting burden on the shoulder of the appellant/defendant in respect of readiness and willingness of the respondent/plaintiff?

7. The learned counsel for the appellant has argued that as the agreement of sale is not a registered document which cannot be read in evidence as the said document is inadmissible. He further argues that the both the Courts below have not appreciated the fact that the plaintiff has not proved the readiness and willingness and wrongly held that the defendant has not objected in the written statement to the willingness and readiness pleaded by the plaintiff.

8. On the other hand, Shri Dangore, learned counsel for the plaintiff submits that after scrutinizing of the oral as well as documentary evidence, both the Courts have held in favour of the plaintiff on the point of readiness and willingness. It is submitted that both the Courts have rejected the case of the plaintiff that the document namely agreement is not a registered document on the ground that no registration is required as by way of the said agreement no title was transferred in favour of the plaintiff or the possession was not handed over.

9. In the light of contentions of the parties, I have perused the record and also judgment and decree passed by both the Courts below.

10. In this matter though the plaintiff has pleaded about his continuous readiness and willingness to perform his part of contract, in the written statement, the defendant has pleaded that as the transaction was cancelled, the question of readiness and willingness does not arise.

11. Thus the defendant did not raise a serious dispute to the case of the plaintiff as regards readiness and willingness. Even in the cross-examination no serious challenge was raised to the oral evidence led by the plaintiff as regards readiness and willingness.

12. In the circumstances, both the Courts below have held concurrently in favour of plaintiff on the point of readiness and willingness. Thus, in absence of any perversity pointed out by the appellant, I answered the substantial question of law in a following manner.

13. In this case, as the findings recorded by both the Courts below on the point of readiness and willingness are based on evidence available on record and as the plaintiff succeeded in bringing on record sufficient evidence. In this regard, I hold that the plaintiff was able to point out before the Courts below that he was ready and willing to perform his part of contract.

14. None of the Courts below has shifted the burden on the shoulder of defendant in respect of readiness and willingness. But the learned Lower Appellate Court has observed that, no serious challenge raised to the pleadings and evidence of the plaintiff as regards readiness and willingness. The said findings are based on evidence available on record and there is no illegality committed by both the Courts below. Hence, I answered substantial questions of law no.2 in above terms.

15. In the circumstances, I do not find any merit in the present second appeal. Accordingly, it is dismissed.

[ANIL S. KILOR, J.]

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