

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

SECOND APPEAL NO. 432 OF 2019

Smt. Rakhitai Wd/o Vilas Singare
Age 47 years, Occ. Household /
Agriculturist,
R/o New Prabhat Colony, Tq. & Dist.
Amravati

...Appellant

// VERSUS //

1. Smt. Kusum Janardan Sawai,
Age about 69 years,
Occupation : Agriculturist
R/o Near Gayatri Dudh Deiry,
Sai Nagar, Amravati, Tq. & Dist.
Amravati
2. Amirunnisa Kasan Shah
Aged about 64 years,
Occupation : Cultivator,
R/o Dhawalsari, Tq. Nandgaon Kh.,
Dist. Amravati
3. The Sub Registrar, Nandgaon Kh
District Amravati

... Respondents

Shri A.V. Gawande, Advocate for the appellant
Shri A.A.Dhawas, Advocate for the respondent no. 2.

**CORAM : ANIL S. KILOR, J.
DATED : 16th MARCH, 2023.**

ORAL JUDGMENT :

The present appeal is arising out of the judgment and decree dated 25th March, 2019 passed in Regular Civil Appeal No. 71 of 2014, partly allowing the appeal and thereby quashing and setting aside the judgment and decree dated 7th March, 2014 passed by the Joint Civil

Judge, Junior Division, Nandgaon Khandeshwar in Regular Civil Suit No. 44 of 2011, decreeing the suit for specific performance of contract.

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

The plaintiff entered into an agreement with the defendant who agreed to sell the suit field to the plaintiff for the total consideration of Rs.3,95,000/- and accepted Rs.1,50,000/- as earnest amount. The sale-deed was to be executed on or before 25th November, 2010, however as the defendant failed to execute the sale-deed the plaintiff filed a suit for specific performance of contract which came to be decreed vide judgment and decree dated 7th March, 2014.

3. The defendant feeling aggrieved by the same preferred an appeal which came to be partly allowed and thereby judgment and decree passed by the learned trial Court came to be set aside. The same is subject matter of the present second appeal.

4. This Court vide order dated 16th October, 2019 framed following substantial questions of law:

(i) Whether the finding rendered by the Appellate Court while reversing the finding of the Trial Court on the question of readiness and willingness on the part of the appellant can be said to be perverse ?

(ii) Whether the Appellate Court was justified in not taking up the appeal filed by respondent no.2 along with appeal filed by the respondent no.1 for proper adjudication of the dispute between the parties ?

5. I have heard learned counsel for the respective parties.

6. Shri Gawande, learned counsel for the appellant submits that without recording the reasons, the findings recorded by the learned trial Court in favour of the plaintiff on the issue of readiness and willingness, came to be reversed back by the learned Lower Appellate Court. It is submitted that the findings are contrary to the evidence and as such findings recorded by the Lower Appellate Court on the issue of readiness and willingness are perverse.

7. It is submitted that the plaintiff all the time was ready and willing to perform part of contract and this fact has not been considered by the Lower Appellate Court.

8. He further submits that when both the parties preferred appeal against the judgment and decree of the trial Court, the learned Lower Appellate Court ought to have decided both the appeals together and by not doing so, proper adjudication of the dispute between the parties was not made by the learned Lower Appellate Court.

9. On the other hand, Shri Dhawas, learned counsel for the defendant has drawn attention to the findings recorded by the learned

Lower Appellate Court on the point of readiness and willingness and submits that the Lower Appellate Court has discussed in detail the evidence and recorded findings.

10. He further submits that as far as the contention of the appellant that both the appeals ought to have been decided together is concerned, in absence of any contradictions in the findings recorded by the learned Lower Appellate Court, for the said reason the judgment would not vitiate.

11. In the light of rival contentions of the parties, I have perused the record and the impugned judgment and decree.

12. It is a settled law that the relief under the Specific Relief Act is a discretionary relief and under Section 16(c) it is necessary for the plaintiff to prove that he was all the time ready and willing to perform his part of the contract.

13. In the present case, admittedly agreement of sale was executed on 17th March, 2010 in respect of the suit property. Total consideration which was agreed was Rs.3,95,000/- out of which the plaintiff was paid to Rs.1,50,000/- as earnest amount. As per the agreement the sale-deed was to be executed on or before 25th November, 2010.

14. It has come on record that on 25th November, 2010 the defendant was present in the office of Sub Registrar, however, the plaintiff did not turn up for execution of sale-deed.

15. On the other hand, it is the case of the plaintiff that on 24th February, 2011 he remained present before the office of Sub-Registrar but the defendant no.1 failed to appear.

16. Interestingly, in this matter the plaintiff even before the execution of sale-deed in favour of the plaintiff by the defendant no.1, entered into an agreement of sale of the suit field in favour of Dadarao Mehare for total consideration for Rs. 4,75,000/- and the date for execution of sale deed was fixed on 20th October, 2010. The said agreement was brought on record as Exhibit 58.

17. In the said backdrop, the learned Lower Appellate Court has observed that exhibit 58 goes to indicate that the plaintiff executed the said agreement to earn profit from sale of suit field. Though she was knowing that she has no title over the suit property, she executed the agreement to sale Exhibit 58 in favour of one Shri Mehare. The learned Lower Appellate Court has further observed that the plaintiff entered into agreement exhibit 58 to make payment of balance consideration to the defendant no.1 and as she failed to receive the said consideration from Shri Mehare, she could not make payment of said consideration to the defendant no.1.

18. According to me, this conduct is sufficient to deny the execution in favour of plaintiff under Section 20 of Specific Relief Act.

19. The learned Appellate Court has discussed the evidence as regards readiness and willingness and held against the plaintiff.

20. After going through the findings recorded by the learned Lower Appellate Court, I am convinced that the findings are based on evidence and there is no perversity committed by the learned Lower Appellate Court in recording the findings of fact as regards readiness and willingness. Accordingly, I answered substantial question of law in the following manner.

21. That the findings recorded by the appellate Court while reversing the findings of the trial Court on the question of readiness and willingness on the part of the plaintiff cannot be said to be perverted.

22. As far as second substantial question of law is concerned, after going through both the judgment and decree passed by the lower appellate Court in the appeals filed by the appellant and the respondent no.2, the appellant failed to point out any contradictions in the same any of the findings recorded by the learned Lower Appellate Court. Hence, it cannot be said that proper adjudication has not been made. Whereas, the learned Appellate Court while deciding both the appeals have properly considered oral as well as documentary evidence on record as such I have answered the substantial question of law in above referred terms. Accordingly, as there is no merit in the present appeal, the appeal is dismissed.

[ANIL S. KILOR, J.]

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