



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 25 OF 2024
WITH
CIVIL APPLICATION NO. 1554 OF 2024 IN SA/25/2024

Vijay Chandmal Munot,
Age : 33 years, Occ. : Business,
R/o. : Sourbh Estate Behind Chandan
Estate, Ahmednagar

... APPELLANT
(Ori. Defendant)

VERSUS

Kirankwar Rajendrakumar Mutha,
Age : 51 years, Occ. : Household,
R/o. : Adarsha Park, behind Nakshtra
Laun, Burudgaon Road, Ahmednagar,
Tq. & Dist. Ahmednagar

... RESPONDENT
(Ori. Plaintiff)

...
Mr. D.R. Jayabhar – Advocate for Appellant
Mr. A.P. Bhandari – Advocate for Respondent
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 28th March, 2024

ORDER :

1. Heard rival submissions on admission of the present
Second Appeal which is against the concurrent findings of
both the learned Courts below.

2. The present respondent i.e. original plaintiff filed
Special Civil Suit No.111 of 2012 against the present

appellant/defendant for recovery of amount of Rs.5,93,000/- alongwith interest. It was the contention of respondent/plaintiff that, she agreed to sale the suit plot i.e. Sub-Plot No.3B of Survey No.53/2A/3 admeasuring 83.20 Sq. meters to the extent of Southern side area of 41.60 Sq. meters alongwith row-house situated thereon in the vicinity of Ahmednagar Municipal Corporation, to the present appellant for consideration of Rs.8,00,000/-. Accordingly, she executed the agreement for sale on 05.07.2011 in favour of appellant by accepting the earnest amount of Rs.1,00,000/-. It was agreed that the remaining amount of Rs.7,00,000/- was to be paid before 06.09.2011 for executing the sale-deed. On 30.08.2011 at the time of sale-deed of the suit plot respondent/plaintiff demanded remaining amount of Rs.7,00,000/- from the appellant, but he told her that he would pay the said amount in the Office of Sub-Registrar. The appellant had also told her to show the consideration amount of the suit plot to the tune of Rs.2,07,000/- to save the amount of stamp duty. Accordingly, the appellant – defendant paid amount of Rs.1,07,000/- to the plaintiff before the Sub-Registrar and

told her he would pay the remaining amount at home. When the plaintiff refused to sign the sale-deed for want of remaining amount, the relatives of appellant picked up quarrel with husband of plaintiff and also lodged false case against him and thereby compelled the plaintiff to execute the sale-deed. Thereafter the appellant did not pay the remaining amount of Rs.5,93,000/- and, therefore, the plaintiff filed the aforesaid suit. The appellant/defendant appeared in the said suit and came out with the case that, he had already paid the remaining amount to the husband of plaintiff by taking loan of Rs.6,00,000/- from Bhairavnath Gramin Patsanstha and the said amount was in fact deposited by the husband of plaintiff in his account with Merchant's Bank, Branch Market Yard. The 3rd Joint Civil Judge Senior Division, Ahmednagar tried the said suit and decreed the same by directing the present appellant to pay amount of Rs.5,93,000/- to present respondent alongwith the interest @10% p.a.

3. Feeling aggrieved with the said decree the appellant/defendant preferred appeal before the learned

District Judge – 6, Ahmednagar i.e. learned First Appellate Court bearing Regular Civil Appeal No.225 of 2015, but the learned First Appellate Court dismissed the same on 21.11.2018 by confirming the decree passed by the learned Trial Court. Hence, this appeal.

4. Learned Counsel for appellant/defendant vehemently argued that, both the learned Courts below did not appreciate the evidence in proper manner. He pointed out that, the appellant/defendant had in fact obtained the loan from Bhairavnath Gramin Patsanstha of Rs.6,00,000/-, which he had paid to the husband of plaintiff. The husband of plaintiff had deposited the said amount in his account with Merchant's Bank and the extract of the said account had indicated the said fact. As such, the appellant/defendant had discharged the burden of showing that, remaining payment in respect of suit plot was paid to the plaintiff. Learned Counsel for appellant/defendant also submitted the substantial questions of law which according to him involved in this Second Appeal are as follows :

- (i) Whether accepting of evidence at Exh.51 (A/c. Extract) in respect of Morya Nagari Sahakari

Patsanstha is justified in absence of pleadings by the plaintiff ?

- (ii) Whether Court can accept any evidence by a party in absence of any pleadings in that respect ?
- (iii) Whether charge can be created over a property without any agreement ?
- (iv) Whether Court can infer positively for a party only on the basis of depositions and plaint ?
- (v) Whether General Power of Attorney can continue with case on the basis of G.P.A. which is created subsequent to filing of suit ?
- (vi) Whether Secondary evidence/document can be accepted without verifying original document ?
- (vii) Whether the recovery suit was maintainable in view of legal principle “*nullus Commodum Capere Potest de injuria sua proprio*” meaning thereby a person who by manipulation of process frustrates the legal rights of others, should not be permitted to take advantage of his own wrong or manipulation?
- (viii) Whether in a suit for recovery of money onus doesn't lie on plaintiff about not receipt of money and thereafter onus shifts and whether view taken by learned both courts below is just and proper ?
- (ix) Whether giving money in cash in transaction is not proper ?

- (x) Whether mere statements of a party who is not a party in transaction can be accepted when there is no complaint/statement by aggrieved party in view of principle of privity of contract ?

5. On the contrary, learned Counsel for respondent/plaintiff strongly submitted that, both the learned Courts below appreciated the evidence on record properly and concluded that, the appellant/defendant could not establish the fact that, he had paid the entire consideration in respect of the suit plot to the plaintiff.

6. It is significant to note that, though the amount for consideration in respect of suit plot is shown as Rs.2,07,000/- in the sale-deed but according to own pleadings of appellant/defendant in his written statement before the learned Trial Court, it was not disputed that, amount of suit plot was fixed to Rs.8,00,000/-. It is the case of respondent/plaintiff that, out of the aforesaid amount of Rs.8,00,000/-, appellant/defendant paid her Rs.1,00,000/- at the time of execution of agreement to sale and on the day of sale-deed Rs.1,07,000/- and as such, remaining amount of Rs.5,93,000/- was due her from the appellant. As against this the appellant/defendant came with the case that, he

paid the amount of Rs.6,93,000/- to the plaintiff on 30.08.2011 by obtaining loan from Bhairavnath Gramin Patsanstha of Rs.6,00,000/-. According to him, the said amount was deposited by the husband of plaintiff in the account of Merchant's Bank. Learned Counsel for the appellant/defendant pointed out that, as per Exhibit – 64 i.e. Account Statement of Merchant's Bank it has been established that, there was deposit of Rs.7,00,000/- in the account of husband of plaintiff on 30.08.2011 and, therefore, it was the same amount which the appellant had paid to the plaintiff by obtaining loan from Bhairavnath Gramin Patsanstha. However, as per Exhibit – 51 which is the Account Extract of husband of plaintiff pertaining to Morya Nagari Sahakari Patsanstha, the husband of plaintiff on 29.08.2011 had withdrawn Rs.7,00,000/-, which according to him, paid in his account with Merchant's Bank.

7. It is extremely important to note that, the appellant/defendant has not examined any witness to show he had obtained the loan from Bhairavnath Gramin Patsanstha of Rs.6,00,000/- and by adding amount of

Rs.93,000/- into it, he paid the same to the husband of plaintiff. Therefore, when the appellant/defendant failed to establish his defence as raised in his written statement, the plaintiff has succeeded in proving that the amount of Rs.5,93,000/- was due from the appellant in respect of the sale transaction of the suit plot. On perusal of the judgment of the learned Trial Court it is clearly evident that, the entire evidence adduced by the plaintiff has been properly appreciated by drawing proper inferences. Moreover, the learned First Appellate Court has also discussed the entire evidence by framing proper points. It appears that, the learned First Appellate Court by relying on the judgment of Hon'ble Supreme Court in the case of **Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others** reported in (2005) 2 SCC 217, additionally observed that, husband of the plaintiff who gave evidence being the Power of Attorney of the plaintiff was having personal knowledge of the sale transaction between the parties. Thus, it appears that both the learned Courts below have given concurrent findings against the present appellant/defendant by appreciating the evidence on record properly and,

therefore, no substantial questions of law as raised by the learned Counsel for appellant, appear to be involved in this matter. Thus, no substance is found in the present Second Appeal and accordingly, it stands dismissed at admission stage alongwith pending Civil Application No. 1554 of 2024.

8. The Second Appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE