



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 161 OF 2015

WITH CIVIL APPLICATION NO. 4375 OF 2015

Dagdu Surjan Choudhari (Died)
Through LRs

- A) Dwarkabai Dagdu Choudhari
(Deceased)
 - B) Prakash Dagdu Choudhari
 - C) Vinod Dagadu Choudhari
 - D) MangalaIshwar Choudhari
 - E) Mina Prabhakar Choudhari
 - F) Mrs. Khatabai Anil Choudhari
 - G) Mrs. Sunanda Padmakar Choudhari
- Appellants

Versus

- 1. Sajanbai Dodha Pardeshi
 - 2. Padmakar Maharu Choudhari
- Respondents

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Mr. Vinod Patil, Advocate holding for Ms. Sabahat Kazi,
Advocate for the appellants.

Mr. Y.G. Gujrathi, Advocate Advocate for respondent No.1.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 25 SEPTEMBER 2024.

ORDER :

- 1. Being aggrieved by the judgment and decree dated 11.09.2012 passed by 2nd Joint Civil Judge, Senior Division, Dhule i.e. learned trial Court in Special Civil Suit No. 96 of 2006 and judgment and decree dated 23.01.2015 in Regular

Civil Appeal No. 273 of 2012 passed by the learned District Judge-4, Dhule i.e. learned first appellate Court, the appellants, who are original defendant Nos.1B to 1G, have preferred this Second Appeal.

2. Brief facts are as under :

Present respondent No.1 is the original plaintiff whereas present respondent No.2 is the original defendant No.2 in the aforesaid suit. Respondent No.1/plaintiff filed the aforesaid suit for specific performance of contract i.e. agreement to sale dated 22.06.2004 by accepting the remaining amount of agreement to sale. The suit property i.e. agricultural land Gut No. 70/1 admeasuring 3 H. 56 R. situated at Ajande Buduruk, Tahsil Shindkheda was originally owned by respondent No.2 i.e. defendant No.2. On 22.06.2004 defendant No.2 Padmakar executed agreement to sale in respect of the area admeasuring 2 H. 96 R. in the aforesaid land in favour of original defendant Dagdu, who admittedly died on 16.02.2007. On the same date Dagdu, with consent of defendant No.2, executed agreement to sale in favour of respondent No.1/plaintiff Sajanbai to the extent of area of 1 H. 46 R. out of the aforesaid land of 2 H. 96 R. Respondent No.1/plaintiff paid an amount of Rs. 5,00,000/-

to defendant Dagdu and remaining consideration of Rs. 35,000/- was to be paid at the time of execution of sale deed. Possession of the said land was handed over to the plaintiff. Defendant No.2 had also signed the said Sauda Pawati dated 22.06.2004 between original defendant Dagdu and plaintiff, as an attesting witness. Thereafter defendant No.2 executed registered sale deed in favour of defendant No.1 Dagdu on 30.06.2004 i.e. 8 days after execution of Sauda Pawati dated 22.06.2004. However, despite acquiring title, defendant No.1 Dagdu refused to execute the sale deed in favour of original plaintiff in respect of the area admeasuring 1 H. 46 R. as mentioned in the Sauda Pawati. As such, the aforesaid Special Civil Suit was filed by the plaintiff in the Court of learned trial Judge. The learned trial Court decreed the suit under the judgment and order dated 11.09.2012. The appeal preferred by legal representatives of defendant No.1 Dagdu before the learned first appellate Court also got dismissed. Thus, the present Second Appeal is filed by the legal representatives of the original defendant No.1 Dagdu against concurrent findings of both the learned Courts below.

3. Learned Counsel for the appellants vehemently argued that both the learned Courts below have definitely

erred in granting specific performance in favour of plaintiff in respect of Sauda Pawati dated 22.06.2004. According to him, the said Sauda Pawati (Exh.87) was not at all registered, and therefore, inadmissible in the evidence. He also raised substantial question of law to that effect about admissibility of the said Sauda Pawati. He also raised another substantial question of law that both the learned Courts below did not consider the vital aspect that defendant No.1 Dagdu was not empowered to execute the said Sauda Pawati (Exh.87) as he was not having any title to the suit property at the relevant time.

4. On the contrary, learned Counsel for respondent No.1/plaintiff pointed out that both the defendants did not lead any evidence against the evidence of respondent No.1, which remained unchallenged. He pointed out that both the substantial questions of law as raised by the appellants, are already answered satisfactorily by the learned Courts below. He relied on the judgment in the case of ***C. Doddanarayana Reddy vs C. Jayarama Reddy*** reported in ***2021 (2) Mh.L.J. 6*** and submitted that when the findings given by the trial Court as well as first appellate Court are based on evidence on record, then it cannot be inferred in the second appeal that

such findings are perverse. As such, he prayed for dismissal of the second appeal at admission stage.

5. Heard rival submissions on admission.

6. It is significant to note that both the learned Courts below have unanimously held that the appellants being legal representatives of original defendant No.1 Dagdu, are under an obligation to execute sale deed of the suit land in favour of respondent No.1/plaintiff on the basis of Sauda Pawati (Exh.87) dated 22.06.2004. Learned Counsel for the appellants, by raising substantial question of law that the said Sauda Pawati was not registered and therefore not admissible in evidence, tried to convince this Court that the finding of both the learned Courts below on this aspect is totally erroneous. However, on going through the judgment of the learned first appellate Court, it is clearly evident that under Section 49 of the Indian Registration Act, un-registered document affecting immovable property, is admissible in evidence in the suit for specific performance of contract. When a clear-cut provision about the admissibility of the disputed Sauda Pawati in the present matter is in existence, then there appears no force in the submission of the learned Counsel for the appellants that the said Sauda Pawati

(Exh.87) being an un-registered document, is not admissible in the evidence.

7. So far as the second substantial question of law as raised by the learned Counsel for the appellants is concerned, it is contended that original defendant No.1 Dagdu had not acquired any title over the suit land at the time of execution of Sauda Pawati (Exh.87) on 22.06.2004, and therefore, the said Sauda Pawati was not binding on him or his legal representatives. However, both the learned Courts below have given reference of specific legal provision in respect of the same. It has been observed that Section 13 of the Specific Relief Act, 1963 provides that under such circumstances the vendor who has subsequently acquired title in the property has to make good his earlier contract to sale. In the present case, though original defendant No.1 Dagdu had no title at the time of executing Sauda Pawati (Exh.87) on 22.06.2004, but subsequently he perfected his title over the subject-matter of said agreement of sale when defendant No.2 executed registered sale deed in his favour in respect of the disputed land on 30.06.2004. Thus, as per Section 13 of the Specific Relief Act, 1963, defendant No.1 Dagdu or his legal representatives were under an obligation to perform their part of agreement to sale dated 22.06.2004.

8. Thus, it appears that both the learned Courts below have answered the aforesaid substantial questions of law satisfactorily and on the basis of the evidence on record. It is significant to note that defendant No.1 and defendant No.2 did not lead any evidence, and therefore, the evidence on behalf of respondent No.1/plaintiff remained unshattered. Further, as per the judgment relied upon by respondent No.1/plaintiff in the case of *C. Doddanarayana Reddy vs C. Jayarama Reddy* (supra), when the findings of both the learned Courts below are based on the evidence on record, then the same cannot be interfered in the second appeal unless the same are perverse. In the instant case, the findings of both the learned Courts below are based on sound principles of law and the evidence adduced by respondent No.1/plaintiff. As such, no interference is required in the impugned judgments. Therefore, the present Second Appeal stands dismissed at admission stage alongwith pending Civil Application No. 4375 of 2015 and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)