



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.434 OF 2024
WITH
CIVIL APPLICATION NO.13360 OF 2024
IN
SECOND APPEAL NO.434 OF 2024**

Ashok Eknath Gujar,
Age 50 yrs. Occ. Agri,
R/o Tonde, Tq. Shirpur, Dist. Dhule

..Appellant
(Orig. Defendant)

Versus

1. Chandrakant Nimba Patil,
Age 49 yrs. Occ. Labour
2. Ashwini Shantaram Patil
Age 42 yrs. Occ. Household
3. Chaya Nimba Patil
Age 38 yrs. Occ. Household
All r/o Mohadi, Tq. and Dist. Dhule.
4. Arunabai Nimba Patil
(died respondent no. 1 to B
Are her legal representative)

..Respondents
(Orig. Plaintiffs)

...

Mr. V. P. Patil, Advocate for the Appellant.
Mr. P. N. Kutti, Advocate for Respondent Nos.1 to 3.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED 12th DECEMBER, 2024.**

ORDER:-

1. The appellant/original defendant impugns judgment and decree dated 28.11.2023, passed by District Judge-5, Dhule in Regular Civil Appeal No.133/2018 upholding judgment and decree dated 21.09.2018 passed by 2nd Joint Civil Judge, Junior Division, Shirpur in Regular Civil Suit No.80/2013. (Hereinafter, parties are

referred as per their original status for the purpose of convenience and brevity).

2. The respondents/plaintiffs instituted a suit for possession, damages, and mesne profits concerning land Block No.114/32, admeasuring 61R, situated at village Tonde, Taluka Shirpur. The plaintiffs contend that the suit land was originally allotted to Nimba Onkar Patil, who served in the Indian Army. The plaintiff no. 2 is Nimba Patil's son, plaintiff nos. 2 and 3 are his daughters, and plaintiff no. 4 is his wife. Nimba Patil passed away on 04.05.2004. Upon his death, the plaintiffs inherited the suit property. The defendant possessed land on the northern side of the suit property. Since the plaintiffs' family resides in Mohadi and the suit property is located in Tonde, they relied on the defendant for assistance in cultivating their land. The defendant took advantage of this situation and, in 2008-2009, took possession of the suit property, subsequently refusing to return it to the plaintiffs. Consequently, the plaintiffs filed the suit seeking possession.

3. In response, the defendant refuted the plaintiffs' claims and filed a counterclaim. He contended that on 06.01.2006, Plaintiff No. 1 agreed to sell the suit property for a consideration of Rs.60,000/-. Upon receiving this amount, possession was handed over to the defendant in the presence of witnesses. Since the land was classified as Class-II occupancy, permission was required for the

transfer, which the plaintiffs assured they would obtain. The defendant claimed he improved the property by installing a pipeline and a tube well, incurring expenses of Rs.1,00,000/-. He expressed readiness and willingness to fulfill his part of the contract and sought a decree for specific performance. The Trial Court framed issues, recorded evidence from both parties, and concluded that the defendant had proven the oral agreement to sell dated 06.01.2006 and the payment of Rs.60,000/- as earnest money. However, the court found that the defendant was not ready and willing to perform his part of the contract. Consequently, the court decreed the suit in favor of the plaintiffs for recovery of possession and directed the defendant to refund the earnest money. Additionally, a decree for mesne profits was passed in favor of the plaintiffs. The defendant appealed against the decree of possession and the rejection of his counterclaim for specific performance. The Appellate Court concurred with the judgment and decree passed by the Trial Court and dismissed the Appeal.

4. Mr. Patil, learned Advocate for the appellant, vehemently submits that both Courts accepted the defendant's case that plaintiff no. 1 entered into an oral agreement to sell on 06.01.2006, and the consideration of Rs.60,000/- was paid. Therefore, there was no impediment to granting a decree for specific performance. He further submitted that the defendant incurred expenses of

Rs.1,00,000/- for the tube well and pipeline installation. He submits that the Courts could have granted an alternative relief for the refund of earnest money alongwith damages. Since the consideration was already paid and possession was given, he contended that the Courts erred in concluding that the defendant was not ready and willing to perform his part of the contract. He would, therefore, urge that there are many substantial questions of law, which requires consideration in this Second Appeal.

5. Per contra, Mr. Kutti, learned Advocate appearing for the respondent nos.1 to 3 submits that plaintiff no.1 was not authorized to execute the agreement to sell the suit property. Therefore, even case of the defendant regarding oral agreement to sale is accepted, it would be invalid in law. Mr. Kutti would further submit that Trial Court on appreciation of evidence arrived at findings that defendant was never willing to perform his part of contract. Therefore, there was no compliance of Section 16(c) of the Specific Relief Act. He would, therefore, urge that concurrent findings recorded by Courts need not be disturbed. No substantial question of law arises for consideration in this Second Appeal.

6. Having considered submissions advanced and after going through reasoning adopted by Courts below, it is evident that the plaintiffs are the legal heirs of Nimba Patil, who owned the suit property. The land was allotted to Nimba as an Army personnel

under a new tenure. Upon his death, the plaintiffs succeeded to the property. Both Courts found that plaintiff no.1 accepted Rs.60,000/- and agreed to sell the land to the defendant. The question, therefore, is whether the defendant's claim for specific performance can prevail over the plaintiffs' claim for possession and mesne profits.

7. The defendant's claim rests on the oral agreement by plaintiff no.1. However, there is no evidence that plaintiff nos.2 to 4 consented to this agreement. The record shows they were not present at the time of execution of the agreement. The defendant did not plead that plaintiff nos.2 to 4 consented to the sale. The counter claim broadly states that the plaintiffs agreed to sell the property, but there is no indication that plaintiff no. 1 was authorized to act on behalf of the others. Therefore, plaintiff no. 1 alone could not transfer the title of the property to the defendant.

8. The Trial Court also noted that although the defendant received possession from plaintiff no.1, he took no steps to secure the execution of a sale deed. Since the land was classified as new tenure, it could not be transferred without permission from the competent authority. The defendant made no efforts to secure this permission and claimed it was plaintiff no.1's responsibility. The Trial Court rightly inferred that the defendant's inaction for over

seven years indicated a lack of willingness to perform his part of the contract.

9. Additionally, the plaintiffs depend on agricultural income. The consideration of Rs.60,000/- for valuable land appears inadequate. Granting specific performance would cause undue hardship to the plaintiffs. The Courts would be justified in refusing specific performance in such cases. As for Mr. Patil's contention that he was legally put into possession by plaintiff no.1 and, therefore, the decree for mesne profits should not have been passed, this argument is difficult to accept. The defendant acquired possession of the land based on an oral agreement to sell with plaintiff no.1. Regarding plaintiff nos.2 to 4, there is no evidence that they consented to this agreement. Therefore, possession obtained through an unauthorized agreement cannot be deemed legal possession. Consequently, the plaintiffs cannot be deprived of their entitlement to mesne profits. The exact amount of mesne profit and the party entitled to receive it may be determined through further inquiry by the Courts. However, this does not warrant interference with the decree passed by the lower Courts. There is no substantial question of arises for consideration in this Second Appeal.

10. Consequently, Second Appeal stands dismissed.

11. In view of dismissal of Second Appeal, Civil Application does not survive and accordingly stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/December-2024