



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.463 OF 2019

Shantabai Balvant Kore

...Appellant

Versus

1. Sanjay Mohanrao Bhosle,
2. Somnath Balvant Kore,
3. Panchfula Baburao Pande,
4. Sharadabai Subhash Karte,
5. Chitra Dnyaneshwar Hangarge,
6. Pinku Virbhadrha Usturge.

...Respondents

WITH
CIVIL APPLICATION NO.9273 OF 2019
IN
SECOND APPEAL NO.463 OF 2019

Shantabai Balvant Kore

...Applicant

Versus

1. Sanjay Mohanrao Bhosle,
2. Somnath Balvant Kore,
3. Panchfula Baburao Pande,
4. Sharadabai Subhash Karte,
5. Chitra Dnyaneshwar Hangarge,
6. Pinku Virbhadrha Usturge.

...Respondents

Adv. H. B. Nandagavale h/f. Mr. V. G. Sakolkar for Appellant.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 18th NOVEMBER 2024.

P.C.:-

1. The present second appeal takes exception to the judgment and decree dated 4th April 2019, passed by District Judge-1, Nilanga, District Latur in Regular Civil Appeal No.5 of 2014 by which judgment and decree dated 24th September 2013 passed by Civil Judge, Senior Division, Nilanga, in Regular Civil Suit No.75 of 2012 has been upheld.

2. The Appellant is original Defendant in Regular Civil Suit No.75 of 2012, which has been instituted by Respondent No.1 seeking relief of specific performance of contract and perpetual injunction in respect of Land Survey No.27/B, situated at Dhamangaon, Taluka Shirur-Anantpal, District Latur. It is contention of Plaintiff that Defendant is the owner of suit property. On 3rd May 2010, he entered into an agreement of sale in favour of Plaintiff for total consideration of Rs.4,61,000/-. At the time of execution of agreement, earnest amount of Rs.3,51,000/- was paid and possession of suit land was handed over to Plaintiff. It was agreed that the sale transaction would be completed within a period of two months. According to the Plaintiff, he was ready and willing to complete his part of the contract. On 28th June 2010, he issued notice by post asking Defendant to execute sale deed but on 7th

July 2010 defendant obstructed possession of the Plaintiff. Consequently, suit has been instituted.

3. The Defendant refuted Plaintiff's claim. The Trial Court framed the issues recorded the evidence and finally decreed suit directing Defendant to execute the sale deed in favour of Plaintiff on deposit of balance consideration of Rs.1,10,000/- within a period of two months and also granted the decree of perpetual injunction in favour of the Plaintiff. The Trial Court concluded that Defendant has executed an agreement to sale deed dated 3rd May 2010 as per stipulation therein and also received the earnest amount of Rs.3,51,000/- in pursuance to the agreement. The Trial Court also concluded that Plaintiff was ready and willing to perform his part of the contract and he is entitled for relief as prayed. The aggrieved Defendant approached District Judge, Nilanga by filing Regular Civil Appeal No.5 of 2014. The Appellate Court also concurred with the findings recorded by Trial Court and maintained Trial Courts judgment and decree while dismissing appeal filed by Defendants.

4. Mr. H. B. Nandagavale, learned Advocate appearing for the Appellant endeavours to assail the concurrent judgment and decree, firstly on ground that agreement prescribes two months period for performance of the contract, however, Plaintiff failed to take necessary

steps within the stipulated period, hence, sale deed could not be executed. He would further submit that there is non-compliance of Section 16(c) of the Specific Relief Act, 1963. The Plaintiff failed to prove his readiness and willingness to perform the contract, thus Court could not have entertained suit. Mr. Nandagavale also contends that agreement was in respect of Survey No.27/B which was not standing in the name of Defendant. The Defendant is the owner of Gat No.27/B. Consequently, agreement at Exhibit 72 cannot be considered in relation to the property of the Defendant.

5. Having considered submissions advanced, it can be observed that Defendant denied each and every averment in the plaint. However, Trial Court on appreciation of the evidence found that Plaintiff proved the agreement through oral evidence of the attesting witnesses, who have categorically stated about execution of the agreement and payment of earnest amount of Rs.3,51,000/-. The scribe Mr. Kishanrao Bhosale deposed in favour of Plaintiff. The signatures of Plaintiff and Defendant are proved through attesting witnesses. Even independent receipt at Exhibit-76 regarding payment of Rs.3,51,000/- to the Defendant has been proved. The Trial Court observed that beside mere denial, Defendant failed to adduce any evidence to support his contention that agreement and receipt are fabricated documents.

6. Similarly on point of misdescription of the property as Survey No 27/B instead of Gat No.27/B, Trial Court observed that Defendant was owner of land Gat No.27/B. The boundaries of land prescribed in agreement and plaint also suggest that it was relating to Gat No.27/B. The attesting witnesses have also deposed about agreement in respect of land in ownership of the Defendant. No fault can be found in the observations of Trial Court, which have been concurred by Appellate Court.

7. Insofar as issue of readiness and willingness to perform the contract or compliance of Section 16(c) of the Specific Relief Act, it can be observed that pleading in plaint clearly avers that Plaintiff was ready and willing to perform contract. The postal receipts as Exhibits 74 and 75 shows that the Plaintiff had issued notice dated 3rd July 2010 by registered post as well as certificate of posting to the Defendant asking for execution of sale deed. The Plaintiff has already parted with the substantial amount of Rs.3,51,000/- at the time of agreement, i.e., on 3rd May 2010, whereas balance of Rs.1,10,000/- was to be paid at the time of execution of the sale deed. Apparently, the Plaintiff has served notice immediately on expiry period of two months indicating his readiness and willingness to perform contract. The aforesaid circumstances are sufficient to hold that Plaintiff was always ready and

willing to perform his part of contract. Pertinently, when Defendant denied execution of agreement itself, it would not lie in his mouth to contend that Plaintiff was not ready and willing to perform his part of contract. The Trial Court as well as Appellate Court concurrently recorded findings that Plaintiff has complied the requirement under Section 16(c) of the Specific Relief Act.

8. In that view of the matter, no substantial question of law arises for consideration in this appeal.

9. Consequently, second appeal stands dismissed.

10. In view of dismissal of second appeal, civil application does not survive and stands disposed of.

(S. G. CHAPALGAONKAR, J.)