

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 303 OF 2022

WITH

CIVIL APPLICATION NO. 8151 OF 2022

Waman s/o Jema Jadhav
Age : 49 yrs, occ : agri & labour
R/o Hasegaon, Taluka Ausa,
District Latur.

Appellant

Versus

Govind Kishan Pawar
Age : 48 yrs, occ : agri.,
R/o Nitur Tanda, Taluka Nilanga,
District Latur.

Respondent

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Mr. M.L. Dharashive, Advocate for the appellant.
Mr. B.R. Kedar, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 11 January 2024.

Order :

1. Heard rival submissions. This appeal is filed by the appellant/original defendant against the grant of specific performance against him and in favour of appellant/plaintiff. The learned trial Court i.e. 2nd Joint Civil Judge (Junior Division), Ausa has decreed the suit bearing R.C.S. No. 481/2012 in favour of present respondent/plaintiff and thereby directed the appellant/defendant to execute sale deed of the suit land i.e. land admeasuring 35 R from Gut No.361

situated at Hasegaon, Taluka Ausa, district Latur by accepting balance amount of consideration. The appellant is also directed to deliver possession of the suit land on execution of sale deed. Thereafter the first appellate court i.e. District Judge-2, Latur on hearing rival submissions, dismissed the appeal i.e. R.C.A. No.128/2019 filed by the present appellant against the decree of learned trial Court. Thus, the present Second Appeal is against two concurrent findings.

2. Learned Counsel for the appellant/defendant submits that following substantial questions of law are involved in this appeal :

- (i) Both the lower Courts erred in granting specific performance in favour of the respondent/plaintiff by ignoring that the suit land was not in the name of respondent.
- (ii) Both the lower Courts failed to observe that the suit land was not transferrable in view of the provisions of Prevention of Fragmentation and Holdings Act.
- (iii) Both the lower Courts failed to appreciate the aspect that the agreement for sale in question was not binding since it was un-registered.
- (iv) Both the lower Courts erred in holding that the appellant/defendant had executed the agreement of sale in respect of the suit land.

3. So far as the contention of appellant that on the date of agreement of sale in dispute the suit land was not in his name is concerned, the learned trial Court has relied on the documentary evidence i.e. 7/12 extract of the suit land at Exh.6 and found that it was in the name of present appellant defendant. Learned trial Court has also considered 7/12 extract (Exh.29) which was relied upon by the appellant / defendant and found that the same was subsequent to the agreement of sale. Thus, it appears that the learned trial Court has properly considered both the 7/12 extracts relied upon by the rival parties and thereafter found that at the time of execution of agreement of sale in respect of the suit land, the suit property was in the name of appellant/defendant.

4. Further, it is significant to note that no defence was raised by the appellant/defendant in his written statement before the learned trial Court that the suit land could not be transferred in view of the provisions of Prevention of Fragmentation and Holdings Act. It is significant to note that the area of the suit land is of 35 R and no objection was raised by the appellant/defendant that it was Bagayat land. Therefore, in absence of evidence about the nature of suit land, whether Bagayat or Jirayat, the

appellant cannot raise this objection at the stage of Second Appeal. Likewise, there is no force in the submission made on behalf of the appellant that the disputed agreement of sale was bad for want of registration as per the provisions under Section 17 of the Indian Registration Act. It is to be noted that such registration of agreement of sale is required only if possession of land in dispute was transferred. Here in this case, the learned trial Court has already directed appellant to hand over the possession of suit land in favour of the respondent / plaintiff only after execution of sale deed.

5. Further, the appellant/defendant has also raised objection about execution of agreement of sale in question and termed it as “sham and bogus” document which was prepared behind the back of his minor son and himself. However, this aspect is dealt by the learned trial Court in the judgment itself and one witness who is Bank Manager wherein the account of appellant/defendant was opened, specifically deposed that the appellant used to sign by mentioning his name. Therefore, execution of agreement of sale has been properly established. Moreover, the first appellate Court also found the observations of learned trial Court in this respect, appropriate. Thus, on going through all

these facts, it appears that both the lower Courts below have properly appreciated the evidence and concurred in findings in favour of the present respondent/plaintiff. As such, in view of the above discussion, no substantial question of law appears to be involved in this appeal. Therefore, the appeal stands dismissed at the admission stage. In view of dismissal of second appeal, the pending Civil Application No. 8151 of 2022 also stands disposed of.

(SANDIPKUMAR C. MORE, J.)