



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 756 OF 2017
WITH
CIVIL APPLICATION NO. 14776 OF 2017 IN SA/756/2017

1. Ramdas s/o. Bapurao Gorde

2. Suresh s/o. Bapurao Gorde

... APPELLANTS

(Ori. Respondents)

VERSUS

1. Krishnarao Rangnath Jadhav

2. Bapurao Balkrishan Gorde
(deceased through L.Rs.)

2A. Sushila Ramdas Navle

2B. Madhukar Bapurao Gorde

2C. Ashok Bapurao Gorde

2D. Dilip Bapurao Gorde

... RESPONDENTS

(Resp. Nos. 2 to 2D –
Ori. Respondents)

...
Mr. Shivraj B. Kadu – Advocate for Appellants

....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 10th September, 2024

ORDER :

1. Heard learned Counsel for the appellants on admission.

2. The appellants who are some of the legal representatives of

original defendant No.1 – Bapurao Balkrishan Gorde have preferred this appeal against the judgment and order dated 06.01.2017 passed in Regular Civil Appeal No. 65 of 2013 by the learned District Judge–2, Kopargaon (*hereinafter referred to as “the learned First Appellate Court”*). The learned First Appellate Court has granted relief of perpetual injunction against the present appellants and respondent Nos.2A to 2D who are the remaining legal representatives of original defendant No.1, in addition to the relief of specific performance granted by the learned Civil Judge Junior Division, Kopargaon (*hereinafter referred to as “the learned Trial Court”*) in favour of present respondent No.1/plaintiff in Regular Civil Suit No. 53 of 2009 under the judgment and decree dated 14.12.2012.

3. Brief facts of the case are as under :

The respondent No.1/plaintiff has filed the aforesaid civil suit for specific performance of agreement of sale dated 04.05.2005 whereby original defendant No.1 had agreed to sale the suit land i.e. area of 60R land out gat No. 72 situated at village Wari, Tq. Kopargaon for Rs.90,000/-. Respondent No. 1/plaintiff had paid part consideration of Rs.60,000/- and remaining amount of Rs.30,000/- was to be paid at the time of execution of sale-deed.

The original defendant avoided to execute the sale-deed of the suit property and therefore, the plaintiff was constrained to issue him notice dated 13.08.2008 for execution of sale-deed by accepting balance amount of consideration. However, original defendant refused to execute the sale-deed under reply dated 22.08.2008 and therefore, plaintiff filed the aforesaid suit. The learned Trial Court after framing proper issues, though partly decreed the suit by allowing specific performance of the aforesaid agreement to sale, but rejected the claim of perpetual injunction by observing that plaintiff could not establish his possession over the suit land.

4. Feeling aggrieved with the rejection of said relief of perpetual injunction, the original plaintiff preferred appeal before the learned First Appellate Court wherein the present appellants and other legal representatives of deceased defendant No.1 filed cross objections challenging the decree passed by the learned Trial Court. However, the learned Trial Court by dismissing the cross objections of the appellants granted the additional relief of perpetual injunction in favour of respondent No.1/plaintiff. Hence, this Second Appeal.

5. Learned Counsel for the appellants vehemently argued that,

both the learned Courts have definitely erred in granting specific performance and relief of perpetual injunction to the present respondent No. 1/plaintiff by ignoring the fact that, there was no legal necessity for original defendant – Bapurao to execute the agreement of sale in respect of the suit property. He pointed out that, the partition theory put forth by the present appellants and as discussed in the judgment of the learned First Appellate Court needs to be considered again. As such, according to him, the substantial question of law involved in this appeal is in respect of consideration of aspect of legal necessity as well as partition theory amongst legal representatives of deceased original defendant – Bapurao.

6. It is significant to note that, both the learned Courts have concurred in holding that, respondent No.1/plaintiff has established all the ingredients required for grant of specific performance of contract. Further, the learned First Appellate Court has also granted relief of perpetual injunction in favour of the plaintiff by setting aside refusal of the learned Trial Court for the same. It is clearly evident from the written statement of original defendant – Bapurao that, he had admitted the execution of agreement of sale dated 04.05.2005 in favour of respondent No.1/

plaintiff. Further, when he has clearly admitted the recitals of the said agreement of sale it can be inferred safely that, he also admitted the delivery of possession of the suit property to the plaintiff as mentioned therein. It is significant to note that, learned Counsel for the appellants has raised the substantial questions of law that, both the learned Courts erred in granting relief of specific performance of the contract without discussing any aspect of legal necessity. However, no such objection was raised either by the original defendant No.1 or the present appellants on this aspect. Further, this being the suit for specific performance it was only to be seen whether the agreement of sale was executed by accepting the valuable consideration or whether the possession was delivered. Therefore, the appellants at this juncture cannot raised issues of legal necessity.

7. Learned Counsel for the appellants also submitted that, there was already a partition amongst the legal representatives of original defendant – Bapurao under a compromise decree whereby the suit land was given to present appellant No.2. According to him, such compromise decree was in fact passed before the judgment and decree of the learned Trial Court. However, the learned First Appellate Court has dealt with this aspect and

observed that, the present respondent No.1 was not part of the said judgment and decree and the suit land was also not given to appellant No.2 absolutely under the said decree, but it was subject to payment of consideration of Rs.1,00,000/- to original defendant – Bapurao. As such, it is rightly observed by the learned First Appellate Court that, the said decree to which the present respondent No.1/plaintiff was not party is not binding on the plaintiff. Therefore, by considering all these facts and in the light of concurrent findings of both the learned Courts below in granting of specific performance of contract, no substantial questions of law as raised by the learned Counsel for the appellants, appear to be involved in this appeal. In the result, the Second Appeal stands dismissed at admission stage.

8. The Second Appeal is accordingly disposed of alongwith pending Civil Application No. 14776 of 2017.

**[SANDIPKUMAR C. MORE]
JUDGE**