



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 SECOND APPEAL NO. 81 OF 2015

LEELABAI MADHUKAR SONAWANE
VERSUS
SAYYED MAHMMAD SAYEED RASUL INAMDAR

...
Advocate for Appellant : Mr. Paresh B. Patil

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 22.04.2024

PER COURT :

1. Heard Mr. Paresh Patil, learned counsel appearing for the appellant at length.

2. The appellant is the original plaintiff in Regular Civil Suit No. 44/1992 and prayed for decree of specific performance of contract, possession of the suit property or in alternative for refund of earnest money.

3. The gist of the matter is that, the defendant/respondent is owner of agricultural land bearing block no. 306/1-A admeasuring 81 R. within territory of Patana Village group Grampanchayat, Taluka Chalisgaon, District Jalgaon (hereinafter referred to as 'suit property'). On 30.01.1991, the defendant orally agreed to sell the suit property in

consideration of Rs. 25,000/- to the plaintiff. Accordingly, the plaintiff paid Rs. 10,000/- towards earnest money. The plaintiff alleged that the defendant agreed to execute the sale-deed in her favour at the time of registration of sale-deed on 30.12.1991. The plaintiff further contended that the defendant was agreed to hand over possession of the suit property at the time of execution of the sale-deed. She and the defendant were to incur 50-50% expenses for execution of the sale deed. According to the plaintiff, she is ready and willing to pay Rs. 5000/- and to perform the part of the agreement but the defendant failed to perform his part of the agreement. The plaintiff further averred that she requested the defendant on many times to accept the remaining amount and to execute the sale-deed but the defendant avoided the same. Therefore, the plaintiff filed a suit and prayed for decree of specific performance of contract.

4. After service of notice the defendant filed Written Statement at Exh 10 and denied claim of the plaintiff. The defendant denied about execution of agreement to sell in favour of the plaintiff and passing of receipt of amount of Rs. 20,000/-. According to the defendant, he received legal notice on 04.12.1991 and replied the same on 15.12.1991. According to the defendant, the husband of the plaintiff

was used to lend money to the people on charging of interest. So also, to secure the loan amount the plaintiff's husband got executed the agreement to sell. The plaintiff's husband does not possess license for money lending and he has not executed agreement of sale of the suit property. The defendant contended that he had obtained amount of Rs. 10,000/- from plaintiff's husband and had agreed to repay the said amount. When he approached the plaintiff's husband for refund of loan amount but at that time the plaintiff's husband demanded Rs. 15,000/- and prepared false agreement to sell and filed suit on the basis of false agreement, which was never to be acted, hence prayed for dismissal of the suit.

5. On the basis of rival pleadings of both sides, the learned trial Court framed issues at Exhibit 11. In order to prove the issues, plaintiff examined her husband / power of attorney holder P.W.1- Madhukar Namdev Sonawane, P.W.2 Vishnu Ganesh Sangeet and P.W. 3 Jagannath Yashwant Shitole.

6. Per contra, the evidence of the defendant shows that the plaintiff and her husband paid Rs.10,000/- and got executed the document of sale in respect of suit property being security to the loan transaction.

On 20.10.2008 the learned Trial Court decreed the suit directing the defendant to execute the sale-deed in respect of suit property in favour of the plaintiff and to hand over possession within a period of one month. The defendant was allowed to withdraw the amount of Rs. 5000/-, deposited by the plaintiff, towards balance consideration and the amount of Rs. 20,000/- deposited in the Court after appeal period is over.

7. Being aggrieved by the said Judgment and decree, the defendant/respondent filed Regular Civil Appeal No. 232/2008. On 04.09.2014, the learned First Appellate Court passed the Judgment and decree and set aside the Judgment dated 20.10.2008 passed in Regular Civil Suit No.44/1992 by the learned Trial Court, holding that the Plaintiff shall be entitled to recover amount of Rs. 10,000/- along with interest at the rate of 12% per annum from the date of the suit till its realization.

8. The learned counsel appearing for the appellant vehemently canvassed that the defendant failed to prove Exhibit 27 agreement to sell dated 30.01.1991 executed towards security, but the plaintiff proved that said agreement was executed as the defendant had agreed

to sell the suit property and said agreement is executed in presence of the witnesses. Therefore, though Section 19 of the Specific Relief Act provides for grant of discretionary relief but the plaintiff proved that the defendant entered into an agreement to sell the suit property in consideration of Rs. 25,000/- and out of which the plaintiff already paid Rs. 10,000/-. So also, as per terms and conditions of the agreement to sell Exhibit 27, the plaintiff and the defendant were agreed to incur 50-50% registration charges. Therefore the plaintiff was required to bear Rs. 5,000/- towards registration charges of the defendant, hence agreed to pay Rs. 5000/- balance amount. Therefore, considering the material evidence available on record, the Trial Court decreed the suit. However, the learned First Appellate Court wrongly held that the document executed by way of security to the loan transaction and set aside the Judgment and decree passed by the Trial Court. Therefore, the findings recorded by the First Appellate Court are illegal and perverse hence prayed for quashing and setting aside the same.

9. It is an admitted fact that the plaintiff did not enter into witness box. On the contrary she examined her husband Madhukar Namdev Sonwane P.W. 1 and P.W. 2 Vishnu Ganesh Sangeet as well as P.W.3

Jagannath Yeshwant Shitole. The P.W. 1 is the Power of Attorney of the plaintiff. The agreement of sale Exhibit 27 shows that the defendant is the owner of agricultural land admeasuring 81 R. The consideration amount of Rs. 25,000/- was fixed under agreement dated 28.01.1991. The said agreement was oral and Written Agreement executed on 30.01.1991. Thereafter, an amount of Rs. 10,000/- was paid to the defendant before the Sub-Registrar and had agreed to pay remaining balance amount at the time of execution of the sale-deed. As per the 7/12 extract (Exhibit 23) name of the defendant was shown in the column of the other right. As per the evidence of P.W. 2 -Vishnu Ganesh Sangeet no money transaction take place in his presence. The evidence of P.W. 3 -Jagannath Yeshwant Shitole appears that the amount of Rs. 10,000/- was paid to the defendant by the husband of the plaintiff (P.W.1). In cross-examination, P.W. 3 deposed about not knowing the details of transactions between the husband of plaintiff and the defendant.

10. On perusal of contents of document Exhibit 27 it clearly suggests about making payment of Rs. 10,000/- to the defendant at the house of defendant itself and there is no denial about receipt of said amount by the defendant. In cross-examination P.W. 1 categorically

stated that his wife not dealing with any transaction. He always carries transaction on behalf of his wife. The document of Power of Attorney Exhibit 20 does not reveal that the husband of the plaintiff (PW.1) is authorized and competent to depose on behalf of the plaintiff to prove the transactions between the plaintiff and the defendant.

11. Needless to say that, though the PW. 1 stated about entering into oral agreement on 28.01.1991 and subsequently reduced into writing on 30.01.1991, however, there is no averment in the plaint about oral agreement between the plaintiff and the defendant. The defence of defendant is that there was loan transaction between him and the husband of plaintiff to pay the debt of one Dharmaraj Sonwane. PW.1 admitted in his cross-examination about presence of Dharmaraj Sonawane at the time of the transaction. The cross-examination of PW. 2 -Stamp-Vendor clearly suggests that he does not remember as to whether he had written several documents for the plaintiff and he does not know about transaction between the plaintiff and the defendant.

12. Per contra, the evidence of witness of defendant suggests that the defendant had obtained loan from the plaintiff's husband and was visited to return the loan amount but the PW. 1 demanded Rs. 15,000/-.

The evidence of PW.3 -Talathi appears that on the day of his evidence i.e. 04.12.2001 the suit property was worth Rs. 2,75,000/-. Therefore, considering the evidence available on record as well as admission given by the defendant, the learned First Appellate Court allowed the appeal and set aside Decree passed by the learned Trial Court and directed that the plaintiff shall be entitled to recover an amount of Rs. 10,000/- along with interest at the rate of 12% per annum from the date of the suit till its realization does not appear to be illegal, bad in law and no any substantial question of law is involved. Therefore, I do not find any substance in the appeal. Hence, the following order :

ORDER

The Second Appeal is dismissed.

(Y. G. KHOBRADE, J.)