



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.32 OF 2022
WITH
CIVIL APPLICATION NO.9562 OF 2022
WITH
CIVIL APPLICATION NO.661 OF 2022**

Ambadas S/o. Vitthal Hajare,
Age: 48 years, Occu. Agril,
R/o. Anwa, Tq. Bhokardan,
Dist. Jalna.

..Appellant
(Orig. Plaintiff)

Versus

1. Dattu S/o. Kisan Jadhav,
Age: 57 years, Occu. Agril
2. Gokarnabai W/o. Dattu Jadhav,
Age: 50 years, Occu. Agril

Both R/o. Anwa, Tq. Bhokardan,
Dist. Jalna.

..Respondents
(Orig. Defendants)

...

Mr. P. B. Salunke, Advocate for the Appellant.
Mr. B. S. Doifode, Advocate for Respondents.

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

ORDER:-

1. The appellant/plaintiff impugns judgment and decree dated 28.10.2021, passed by District Judge, Jalna in Regular Civil Appeal No.134/2017, thereby reversing judgment and decree dated 13.07.2017 passed by Civil Judge, Junior Division, Bhokardan in Regular Civil Suit No.75/2009. (Hereinafter, parties are referred as per their original status for the purpose of convenience and brevity).

2. The appellant/plaintiff instituted Regular Civil Suit No.75/2009 seeking specific performance of contract based on agreement to sale dated 03.02.2009, allegedly executed by defendants in respect of open land, City Survey No.147 admeasuring 15 ft. x 15 ft.. The plaintiff contends that defendants were owners of the plot admeasuring 15ft. x 15 ft. in North-East corner of City Survey No.147. On 03.02.2009, defendants executed agreement to sale in respect of suit plot in favour of plaintiff for consideration of Rs.40,000/-. The agreement is reduced into writing on stamp paper of Rs.100/- and notarized. The possession of property was handed over to plaintiff after receipt of consideration amount. However, later on defendants refused to execute sale deed. Eventually, plaintiff required to issue notice dated 15.04.2009 through Advocate calling upon defendants to execute sale deed. However, defendant no.1 refused to do so and also dispossessed plaintiff. Hence, suit for specific performance of contract and possession.

3. The defendants refuted plaintiff's claim contending that they had purchased land from one Geetabai for Rs.64,000/- and constructed house no.474. They had instituted suit against Pundalik Ananda Sonune for permanent injunction. Under the pretext of settlement of dispute, plaintiff had obtained blank stamp paper of Rs.100/- from defendants, which has been utilized to

prepare false agreement to sale. The Trial Court framed the issues, recorded evidence of the parties and approved the claim of plaintiff and granted decree of specific performance of contract. The Appellate Court reversed the findings of Trial Court against material issue and concluded that plaintiff failed to prove agreement to sale. Consequently, dismissed the suit.

4. Mr. Salunke, learned Advocate appearing for the appellant vehemently submits that Trial Court on appreciation of evidence accepted the case of the plaintiff and decreed the suit. However, Appellate Court reversed the decree on erroneous counts. Mr. Salunke invites attention of this Court to the evidence of plaintiff-Ambadas, so also attesting witnesses and Advocate Notary. All these witnesses supported case of the plaintiff. Mr. Salunke would submit that although agreement to sale was executed on stamp paper of Rs.100/-, document was impounded by permission of the Court and same has been admitted in the evidence. Merely because defendants denied thumb impression on agreement, Appellate Court reversed decree in absence of evidence to rebut case put up by plaintiff. He would, therefore submit that perversity in appreciation of evidence by Appellate Court would be substantial question of law in this second appeal.

5. Per contra, Mr. Doifode, learned Advocate appearing for respondents supports the judgment and decree passed by Appellate

Court. According to him, Appellate Court has recorded finding of the fact on appreciation of evidence that execution of document and payment of consideration is doubtful. Consequently, refused to grant decree of specif performance.

6. Having considered submissions advanced, it is apparent that plaintiff rest his case on agreement to sale dated 03.02.2009 placed at Exhibit-41. It is true that plaintiff entered into witness box, so also examined attesting witnesses and Notary. However, evidence so recorded on behalf of plaintiff needs appreciation taking into account defence employed by defendants, thereby denying thumb impression appearing on agreement to sale. The agreement to sale stipulates that agreed consideration amount of Rs.40,000/- was already transferred to defendants. During cross-examination of plaintiff, plaintiff could not answer as to when transaction took place, where consideration amount was paid and who was witness to payment of consideration. Similarly, Appellate Court recorded discrepancy in the statement of attesting witnesses. PW2-Shankar states that plaintiff put his thumb impression and they have also put their signature, but he admits that agreement to sale was not read over to the plaintiff in their presence. He claims that he never visited the house of defendant no. 1, despite stating during his examination-in-chief that the discussions took place at the house of defendant no. 1. The Advocate Notary stated that agreement to

sale was already got typed by the parties and he only notarized the same. The attesting witness states that the agreement to sale was dictated and typed by Advocate Sapkal, but Advocate Sapkal claims ignorance regarding who typed the document. The learned Appellate Court in para no.15 of the judgment specifically recorded serious discrepancies in evidence and conduct of plaintiff and consequently, refused to grant decree for specific performance.

7. The learned District Judge further recorded the conduct of the plaintiff, particularly in light of the defense that the thumb impression did not belong to the defendant. Although the stamp paper is shown to have been purchased by the defendants, the plaintiff's witness, Advocate Sapkal, admitted that there was some compromise talks regarding the earlier suits. The Appellate Court finds that it resembles the defense put forth by the defendants that the stamp has been misused.

8. Notably, the Trial Court's exercise of powers under Section 73 of the Evidence Act to compare the plaintiff's thumb mark and thumb impression was unjustified. The onus was on the plaintiff to request an expert examination for document comparison. In backdrop of aforesaid circumstances, Appellate Court refused to grant discretionary relief in favour of plaintiff and thought it fit to reverse the decree of Trial Court. The view taken by the Appellate Court appears to be more reasonable and logical in light of the facts

of the case, particularly when the defendants are illiterate and vulnerable to victimization. Therefore, the Second Appeal sans merit, particularly as there is no substantial question of law that would warrant the interference of this Court under Section 100 of the Code of Civil Procedure.

9. Consequently, Second Appeal stands dismissed.

10. In view of dismissal of Second Appeal, Civil Applications do not survive and accordingly stand disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/December-2024