



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.395 OF 2024
WITH
CIVIL APPLICATION NO.12589 OF 2024
IN
SECOND APPEAL NO.395 OF 2024**

Shakila Khanam w/o Jaker Ahemad,
Age : 51 years, Occu. : Household,
R/o In the part of House No. 23,
Block No. 23, Labour Colony,
Nanded, Tq. and Dist. Nanded. ..Appellant

Versus

1. Khan Rafiq Ahmad s/o Isaq Khan,
Age : 56 years, Occu. : Business,
R/o Labour Colony, Nanded,
Tq. and Dist. Nanded. ..Respondent
(Ori. Plaintiff)
2. Gafar Khan s/o Jabbar Khan,
Age : 53 years, Occu. : Labourer,
R/o. Dulhe Shah Rahman Nagar,
Saibaba Nagar, Near Water Tank,
Nanded, Tq. and Dist. Nanded
3. Rashida Begum w/o Mohammad Hussain,
Age : 58 years, Occu. : Household,
R/o Khadakpura, Nanded,
Tq. And Dist. Nanded. ..Respondents
(Ori. Def. Nos. 1 and 2)

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Mr. Nitin Jagdale h/f Mr. M. V. Salunke, Advocate for the Appellant.

Mr. P. R. Katneshwarkar, Senior Advocate i/by Mr. B. N. Gadegaonkar, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED 02nd DECEMBER, 2024.**

ORDER:-

1. The appellant takes exception to judgment and decree dated 31.08.2024 passed by the District Judge-1, Nanded in Regular Civil Appeal No.154/2014, by which judgment and decree dated

27.04.2012 passed by 2nd Joint Civil Judge Senior Division, Nanded in Regular Civil Suit No.91/2012 has been confirmed. (Hereinafter, parties are referred as per their original status for the purpose of convenience and brevity).

2. The respondent no.1/original plaintiff filed Regular Civil Suit No.91/2012 seeking decree of specific performance of contract dated 15.02.1993, 10.10.1996 and 07.12.2002 against defendants in respect of suit property. The suit property was originally owned by Jabbarkhan and after his death his wife Habibjan and son Gafarkhan occupied the house. On 15.02.1993 Habibjan and Gafarkhan sold out some portion of house property in favour of plaintiff. Thereafter, on 15.02.1993 and 20.02.1993 Gafarkhan and Habibjan executed agreement to sale in respect of remaining portion. On 10.10.1996 again Habibjan and Gafarkhan executed agreement to sale of Western side portion of house in favour plaintiff. After death of plaintiff's mother, defendant nos.1 and 3 started residing in room of suit house towards Northern side. The plaintiff requested defendants to accept balance amount of consideration and transfer the house. However, they refused to do so. Therefore, plaintiff issued legal notice dated 01.04.2006 to defendants and finally filed suit for specific performance. The defendant nos.1 and 2 filed written statement and accepted the case of plaintiff. The defendant no.3 did not file written statement.

Consequently, Trial Court decreed the suit directing defendant nos.1 to 3 to transfer the name of the plaintiff on record by deleting name of original owner Jabbarkhan. The defendants were further directed to hand over possession of Northern side room to the plaintiff.

3. The appellant who is original defendant no.3 filed Regular Civil Appeal No.154/2014 against judgment and decree passed by Trial Court. It was contention in Appeal that defendant nos.1 and 2, in collusion with each other, engaged Advocate for defendant no.3. Her written statement was not filed. The defendant nos.1 and 2, in collusion with plaintiff, filed consenting written statement. Consequently, suit has been decreed. The Appellate Court on perusal of record pertaining to service of summons and signature on vakalatnama concluded that there is no substance in claim of appellant. Consequently, dismissed the Appeal.

4. Mr. Jagdale, learned Advocate appearing for the appellant vehemently submits that this is a case of fraud against appellant. The appellant is in fact residing in portion of suit house. The brothers of appellant gave collusive written statement. Consequently, decree has been passed in favour of plaintiff. The appellant was not given opportunity to contest the claim. Therefore, he submits that matter may be remanded back to Trial

Court by granting opportunity in favour of appellant to file her written statement and contest the suit.

5. Mr. Katneshwarkar, learned Senior Advocate appearing for respondent no.1 submits that appellant caused her appearance in response to suit summons. Her signature appears on vakaltnama alongwith defendant nos.1 and 2. She did not file written statement before the Trial Court. The Trial Court after considering evidence on record, decreed the suit. The present appellant-defendant no.3 filed Appeal before the District Court with similar grievance. However, District Court after considering material on record, dismissed the Appeal.

6. Having considered submissions advanced by the learned Advocate appearing for the respective parties, it can be gathered that appellant/defendant no.3 was served with suit summons. The report of Bailiff suggests that at first attempt defendant no.3 did not accept notice saying that she is pardanashin lady. Later on, on her request notice was accepted by her husband. The report of Bailiff clearly shows that appellant had sufficient knowledge of filing of the present suit and she was served with suit summons. The defendant no.3 has signed vakalatnama in English language, which is at Exhibit-18. The Appellate Court observed that aforesaid factors clearly indicates that she had sufficient knowledge of pending suit. Since appellant/defendant no.3 failed to

file her written statement, “no written statement” order was passed on 18.10.2006. Finally the suit came to be decreed in the year 2012. The aforesaid sequence of events demonstrates that appellant had sufficient opportunity to defend the suit. However, she failed to contest it by filing written statement.

7. Perusal of signature on the vakalatnama and address memo filed before the District Court in Regular Civil Appeal No.154/2014 and vakalatnama filed before the Trial Court in Regular Civil Suit No.91/2012, it can be observed that signatures are consistent. Pertinently, it is not case of the appellant that aforesaid signatures are forged.

8. Perusal of grounds raised in Appeal memo before the District Court as well as in this Second Appeal nowhere suggests that appellant has ever denied her signature on vakalatnama tendered before the Trial Court. It is only when execution of the decree undertaken by plaintiff, she is raising aforesaid objection. The findings recorded by Appellate Court are based on appreciation of material on record. Hence, no substantial question of law arises for consideration in this second appeal.

9. Consequently, Second Appeal stands dismissed.

10. In view of dismissal of Second Appeal, Civil Application does not survive and stands disposed of accordingly.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/December-2024