

MJ Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 176 OF 2022
WITH**

**INTERIM APPLICATION NO. 1264 OF 2022
IN
SECOND APPEAL NO. 176 OF 2022**

Laxmibai Sanjay Awale

.....Appellant/Applicant

Vs.

Babgonda Jingonda Patil

.....Respondent

Mr. Pramod G. Kathane for the Appellant/Applicant.
Mr. Akshay Kulkarni for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 24th JUNE 2024

ORDER :

1. Heard learned counsel for the parties. The second appeal challenges the concurrent judgments and decrees passed against the appellant for possession of the suit property. The suit was filed based on the plaintiff's title and cancellation of the agreement for sale in favour of the appellant.

2. Learned counsel for the appellant submits that the evidence on record produced by the appellant indicates that the balance consideration as per the suit agreement dated 3rd September 2003 was paid to the plaintiff. Thus, he submits that though the balance consideration was accepted, the plaintiff illegally cancelled the sale agreement. He submits that as per the agreement between the parties, the plaintiff was under obligation to seek statutory permission for the execution of the sale deed. Since the plaintiff failed to take statutory permission, the sale deed was not executed. He thus submits that once the appellant was put in possession pursuant to the agreement and the entire consideration was accepted by the plaintiff, he was not entitled to seek possession of the suit property. He submits that since the appellant was in possession pursuant to an agreement for sale, the possession is protected in view of Section 53(a) of the Transfer of Property Act, 1882. He thus submits that in view of the subsistence of the agreement in favour of the appellant, the plaintiff was not entitled to seek possession.

3. Learned counsel for the respondent submitted that the payment

of balance consideration is not proved by the appellant. He submits that by notice dated 2nd January 2010, the agreement in favour of the appellant was cancelled. The appellant has neither challenged the cancellation of the agreement in his favour nor sought any specific performance of the agreement. Hence, the appellant is not entitled to retain the possession of the suit property.

4. I have considered the rival submissions made by the parties. Perused the papers. It is not in dispute that the agreement in favour of the appellant was cancelled by notice dated 2nd January 2010. It is further not in dispute that neither notice for cancellation was challenged nor the appellant applied for specific performance of the agreement in his favour. With regard to the payment of the balance consideration amount is concerned both courts have recorded findings of facts that the appellant failed to prove payment of the balance consideration amount.

5. Since the cancellation of the agreement is not in dispute and the appellant has failed to seek any specific performance of the agreement, the appellant is not entitled to retain the suit property

perpetually.

6. Admittedly, the appellant was put in possession of the suit property only pursuant to the agreement executed by the respondent. Thus, once the agreement stands validly cancelled, the appellant is not entitled to continue in possession of the suit property. Hence, in view of the finding of facts recorded by both Courts that time was the essence of the contract and the appellant failed to prove balance payment within the stipulated time and that there was valid cancellation of the suit agreement, there is no subsisting right in favour of the appellant. Admittedly, the appellant has not sought specific performance of the contract. The appellant was unable to prove that he had performed his part of the contract and that he was willing to perform his part of the contract. Thus, no case is made out to seek protection under Section 53-A of the Transfer of Property Act. Hence, the question of law, as sought to be argued on behalf of the appellant, does not require any consideration by this Court.

7. The second appeal does not raise any other substantial question of law. Hence, the second appeal is dismissed.

8. In view of the dismissal of the second appeal, Interim Application No. 1264 of 2022 is dismissed as infructuous.

[GAURI GODSE, J.]

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signed by
MANGALTAI
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JADHAV
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