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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 711 OF 2022

Shri. Prakash Yashwant Solage

.....Appellant

Vs.

Shri. Pramod Devendra Nazre

.....Respondents

(D/H) Smt. Neeta Pramod Nazare and Ors

Mr. Kiran C. Shivguppe for the appellant

Mr. Tejesh Dande a/w Mr. Bharat Gadhavi a/w Mr. Sarvesh Deshpande
i/b Tejesh Dande and Associates for the respondents

CORAM : GAURI GODSE, J.

DATE : 20th SEPTEMBER 2024

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ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by the original defendant no. 1 to challenge the concurrent judgments and decrees granting specific performance of the agreement executed in favour of the plaintiffs.

2. Learned counsel for the appellant submitted that the main condition of the contract was to obtain necessary permission from the competent authority. He submits that for want of any such permission,

both the Courts erred in granting specific performance of the contract. He further submits that after the decree was passed, an application was filed by the plaintiffs seeking permission from the competent authority, however, permission is refused on 19th August 2024. He thus submits that for want of any permission, both the Courts could not have granted decree for specific performance.

3. Learned counsel for the appellant further submitted that defendant no. 1 had specifically pleaded in the written statement that agreement dated 8th July 2005 was not signed by him. He submits that the agreement relied upon by the plaintiff is on Rs. 1/- stamp paper and it was not signed by the defendant no. 1. He referred to the extract of the written statement reproduced by the Trial Court in the impugned judgment in paragraph 14. He submits that though there was a specific denial regarding the signature on the agreement dated 8th July 2005, the Trial Court as well as the first Appellate Court erred in not considering the factual aspect of denial of signature. He submits that both the Courts proceeded by incorrectly reading the facts that defendant no. 1 had not denied his signatures.

4. Learned counsel for the appellant further submits that the plaintiff

is a land mafia and has got various documents executed from various land owners. He further submits that in the absence of any specific agreement between the parties, both the Courts erred in granting specific performance. He thus submits that the second appeal requires consideration on the aforesaid points as it raises substantial questions of law.

5. I have perused the judgments of both the Courts as well as the plaint. The plaintiffs have relied upon the agreement dated 8th July 2005 and agreement dated 10th August 2005 to seek specific performance. Both the Courts have accepted execution of the agreement dated 10th August 2005. Based on the terms and conditions agreed in the agreement dated 10th August 2005, suit for specific performance is decreed. Both the Courts after examining the pleadings and evidence on record have recorded factual findings regarding execution of the suit agreement.

6. The point raised regarding obtaining permission of the competent authority as a condition for execution of the sale deed is also considered by both the Courts. In view of the terms of the agreement, specific performance is granted on a condition of obtaining

necessary permission from the competent authority. The decree further directs that in the event permission is not granted, the plaintiffs would be entitled to refund of the earnest amount with interest. Thus, the condition regarding obtaining permission from competent authority is taken care of by the impugned decrees. Hence, on the said ground, the second appeal would not require any consideration.

7. On the point regarding not signing the said agreement is concerned, same would amount to re-appreciating the facts and evidence on record which is not permissible under section 100 of Code of Civil Procedure, 1908. Even otherwise, it is not the case of the appellant that the agreement dated 10th August 2005 is not signed by him. By the impugned judgments and decrees, specific performance is granted of agreement dated 10th August 2005.

8. Learned counsel for the appellant argued that the permission is refused by the competent authority on 19th August 2024. However, same would not warrant any interference by this Court. In the event the permission is refused by the competent authority, as per the impugned decree, the plaintiffs would be entitled to refund of the earnest amount with interest.

9. Hence, none of the grounds raised on behalf of the appellant raise any substantial question of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]