

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 181 OF 2022
ALONGWITH
INTERIM APPLICATION NO. 17244 OF 2022**

Mrs. Laxmi Shankar Hadkar
Through Her Power of Attorney Holder
Sham Shankar Hadkar

**....APPELLANT
(ORIG. DEFENDANT)**

V/S.

Smt. Lata Chandrakant Mhapankar

**....RESPONDENT
(ORIG. PLAINTIFF)**

Mr. A.S. Khadeparkar, *Senior Advocate a/w. Mr. Rohit P. Mahadik,
Mr. Rushikesh Bhagat, Mr. Vaibhav Kulkarni, i/by. Khandeparkar &
Associates, for the Appellant.*

Ms. Babita P. Pandey, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 4 March 2024.

P.C. :

1) This Appeal is filed challenging the judgment and decree dated 19 March 2021 passed by the District Judge, Sindhudurg at Oras

by which Regular Civil Appeal No 121 of 2014 is dismissed and decree dated 11 July 2014 passed by the Trial Court in Special Civil Suit No. 25 of 2000 is confirmed. The Trial Court has decreed the suit directing the Appellant to execute sale-deed in favour of the Appellant on accepting the remaining amount of consideration.

2) I have Mr. Khandeparkar the learned senior advocate appearing for the Appellant and Ms. Pandey, the learned counsel appearing for the Respondent.

3) The suit filed by the Plaintiff for specific performance of the Agreement for Sale dated 8 June 1997 was sought to be defended by the Appellant/Defendant by taking a plea that the transaction between the parties was not of sale but merely of handloan. She contended that her signature on blank stamp paper was misused by the Plaintiff for preparation of forged document in the form of Agreement for Sale. Though the Defendant filed Written Statement raising these contentions, she failed to lead evidence to prove those averments. The Trial Court however dismissed the suit by Decree dated 27 August 2008. The Trial Court's decree was however set aside by the first Appellate Court and the suit was remanded for fresh decision by Judgment and Order dated 9 January 2014. Parties were given another opportunity to lead additional evidence and also to cross-examine Plaintiff's witness. However, even on remand, the Defendant neither led any evidence nor cross-examined the Plaintiff's witness. The Trial Court therefore proceeded to decree the suit by Judgment and Order

dated 11 July 2014, which is confirmed by the first Appellate Court by its judgment dated 19 March 2021.

4) Mr. Khandeparkar would contend that the Plaintiff did not aver her readiness and willingness to perform her part of contract nor proved the same. Relying on the judgment of the Apex Court in **U.N. Krishnamurthy (since deceased) thr. Lrs. V/s. A.M. Krishnamurthy, 2022 SCC Online SC 840**, Mr. Khandeparkar would contend that readiness and willingness must be averred in the plaint. He would submit that no such averment was raised in the plaint. He would submit that the Plaintiff must stand on his own feet and her success in the suit cannot and does not depend on Defendant's failure to lead evidence. He would submit that the document of Agreement for Sale is clearly suspicious as the same is executed on stamp paper of Rs.20/- He would therefore submit that the Trial Court had rightly dismissed the suit by Judgment and Decree dated 27 August 2008.

3) I have considered the submissions canvassed by the learned counsel appearing for the parties. The judgment of the Apex Court in **U.N. Krishnamurthy** (supra), in my view would have no application to the facts and circumstances of the present case. In that case, the Plaintiff therein had paid part consideration of Rs.10,000/- out of the total agreed consideration of Rs.15,10,000/-. It is on account of these factors that the Apex Court expected the Plaintiff therein to aver and prove that the balance amount of Rs.15,00,000/- was ready with him to

be paid to the Defendant. The Apex Court went into the Balance Sheet of the Plaintiff to examine whether the balance amount of consideration was available with the Plaintiff or not. The Balance Sheet, however did not prove that the Plaintiff therein was ready with the balance amount of consideration. In the present case, on the other hand, the transaction was agreed for amount of Rs.1,84,500/- out of which an amount of Rs.1,23,000/- was already paid to the Defendant and the balance amount was only Rs.61,500/-. The Plaintiff showed willingness to deposit the said amount in the Court. She led evidence in which she again reiterated her desire and willingness to deposit the balance amount of consideration in the Court. Therefore, readiness and willingness by the Plaintiff was both pleaded as well as proved in the present case.

4) It was the Defendant who contended that the transaction was of loan and not of sale. Therefore, the burden of proving that the transaction was of loan, rested on the shoulders of the Defendant, which burden, the Defendant failed to discharge. Not only the Defendant did not lead evidence, she did not even bother to cross-examine Plaintiff's witness despite having two opportunities. It must be observed that while remanding the suit for fresh trial, an opportunity was given to the parties to lead additional evidence, as well as to cross-examine Plaintiff's witnesses. The Defendant failed to avail the opportunity.

5) In view of the facts and circumstances of the present case, I am of the view that both the Trial as well as the first Appellate Court

have rightly decreed the suit of the Plaintiff. No substantial question of law is involved in the Appeal. The Appeal is accordingly **rejected**.

6) With rejection of the Appeal, the Interim Application does not survive. The same also stands disposed of.

SANDEEP V. MARNE, J.