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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 10032 OF 2024
IN
SECOND APPEAL NO. 58 OF 2018

Maruti Jagannath Shinde and Ors ... Applicants

vs.

Balkrishna Rajaram Patil and Ors ... Respondents

Mr. Prakash U. Sutar for Applicants.

Mr. Ashish Kumar Srivastava a/w. Mr. Ranjeet H. Patil i/b.

Mr. Kuldeep S. Patil, for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 26th AUGUST 2024

ORDER:

1. This application is for setting aside the order dated 3rd May 2024, dismissing the Second Appeal for non prosecution with a prayer to restore the Second Appeal. Learned counsel for the applicants submits that the reasons for non-compliance of the directions issued by this court vide order dated 21st October 2022, are explained by the applicants in the present application. He submits that the Second Appeal was dismissed for non prosecution as there was no compliance made, and the application was not

argued on merits. Since, the main grievance of the applicants was with regard to the Second Appeal being not heard on merits, I permitted the learned counsel for the applicants to argue the Second Appeal on merits to ascertain whether the Second Appeal raises any substantial question of law.

2. Second Appeal is filed by defendant nos. 3, 4 and 5 to challenge the concurrent judgments and decrees granting specific performance in favour of respondent no.1. Learned counsel for the appellants submitted that time was the essence of the terms and conditions of the suit agreement. He submitted that respondent no.1 was under obligation to make payment of balance consideration amount which he failed to do so and thus, he is not entitled to seek specific performance of the agreement.

3. Learned counsel for the applicants further submitted that both the courts have erred in not taking into consideration that time regarding payment of balance consideration was the essence of the terms and conditions of the contract and thus, in view of the non-compliance, the plaintiff was not entitled to seek a specific performance of the contract.

4. Learned counsel for the applicants further submits that the original owner of the suit property was defendant no.1, who had

received suit property through her father. He submits that defendant no.2, is defendant no. 1's husband and his name was recorded in Other Right Column. Hence, one of the terms and conditions of the contract was with regard to deletion of defendant no.2's name from the revenue record. He submitted that the plaintiff was well aware of the proceedings initiated for deleting the name and actual deletion of the name. However, the plaintiff failed to make balance consideration amount. Hence, plaintiff was not entitled to seek specific performance. He submitted that the plaintiff was not a bonafide purchaser as no efforts were made on behalf of the plaintiff to verify the title of the suit property before seeking specific performance. He submitted that since the plaintiff failed to perform his part of contract, defendant no.1, executed sale deed in favour of defendant nos. 3, 4 and 5. He thus, submits that in view of execution of the sale deed in favour of defendant nos. 3,4 and 5, both the courts could not have granted specific performance of the contract.

5. The learned counsel for the appellants thus, submits that the Second Appeal raises substantial questions of law on the point of the plaintiff's entitlement to seek specific performance as the plaintiff had failed to perform his part of contract. According to the learned

counsel for the appellants, the second appeal also raises substantial questions of law, whether the terms and conditions of the contract which casted burden upon the plaintiff to make payment of balance consideration amount was not considered by both the courts.

6. I have perused the papers of the Second Appeal and considered the submissions made on behalf of the appellants. Both the courts have concurrently held that defendant no.1 i.e. the owner of the suit property and her husband defendant no.2 has executed the agreement of the suit property. Execution of the agreement is not in dispute. The payment of earnest money is also accepted by both the courts. So far as plaintiff's claim with regard to payment of balance consideration amount is also accepted, except Rs.7000/-. There is no dispute that as per the terms and conditions of the contract, the defendant no.1 was under obligation to get the name of the defendant no.2 deleted from the revenue record. There is also no dispute that the name of the defendant no.2 was deleted on the application preferred before the Revenue Authority. Thus, as per the terms and conditions of the contract, the sale deed was required to be executed, and the plaintiff was under obligation to make payment of the balance consideration amount. The terms of the contract

discussed by both the courts indicate that except for payment of balance consideration amount at the time of execution of the sale deed, there was no other specific performance to be completed by the plaintiff. Thus, in view of the subsistence of the agreement between the plaintiff and defendant no. 1, sale deed executed in favour of defendant nos. 3, 4 and 5 is not accepted as a valid execution of the sale deed.

7. Hence, the trial court decreed the suit by directing the plaintiff to deposit the balance consideration amount and further directed the defendant to execute the sale deed. The impugned decree also directs the defendants to execute the sale deed. The impugned decree also directs the defendants to hand over possession of the suit property to the plaintiff. The trial court's decree is confirmed by the First Appellant Court. The First Appellate Court after re-examining the pleadings and evidence on record has confirmed the trial court's findings. Thus, the grounds argued on behalf of the applicant regarding the payment of balance consideration amount being essence of the contract is considered by both the courts. There is a concurrent finding recorded by both the courts that except for payment of balance consideration amount at the time of execution of sale deed there was no performance to be made by the

plaintiff.

8. Second ground argued regarding the plaintiff not being a bonafide purchaser, I do not find any substance in the argument raised. The execution of the suit agreement is not in dispute. The payment of earnest money received by defendant no.1, who is the original owner is also not in dispute. In compliance of the execution of the contract steps were taken to delete the name of defendant no.2. The First Appellate court has clearly recorded the compliance of the terms that the name was deleted and the same was recorded by way of mutation entry no. 76. Thus, the compliance on the part of the defendant no.1 is also considered and recorded by the First Appellate Court before confirming the trial court's decree.

9. In view of the concurrent findings of fact recorded by both the courts, I do not find any substance raised on behalf of the appellants. The grounds raised would require no consideration by this court. Second Appeal does not raise any substantial question of law.

10. Since the Second Appeal was dismissed for non prosecution for compliance of order passed by this court, I permitted the learned counsel for appellants to argue the Second Appeal on merits. Considering the peculiar facts of the case and since the learned

counsel for the appellants argued the Second Appeal on merits, the Interim Application No. 10032 of 2024 is allowed, and Second Appeal is restored to file.

11. I have already heard the learned counsel for the appellants to ascertain whether the Second Appeal raises any substantial questions of law. In view of the reasons recorded above, the Second Appeal does not raise any substantial question of law. Hence, Second Appeal is dismissed.

12. In view of dismissal of the Second Appeal, Civil Application No. 1684 of 2017, is dismissed as infructuous.

(GAURI GODSE, J.)