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

**SECOND APPEAL NO. 403 OF 2019
WITH
CIVIL APPLICATION NO. 927 OF 2019
IN
SECOND APPEAL NO. 403 OF 2019**

Shivaji Ishwara Aiwale

.....Appellant

Vs.

Ambubai Maruti Gejage
(Deceased thru LRs) and ors

.....Respondents

Mr. Nilesh Wable a/w Mr. Umesh R. Mankapure for the appellant

CORAM : GAURI GODSE, J.

DATE : 18th NOVEMBER 2024

ORDER:

1. Heard learned counsel for the appellant. This second appeal is preferred by the plaintiff to challenge the concurrent judgments and decrees dismissing the appellant's suit. The suit was filed for mandatory injunction directing defendant no. 1 to attend Registrar's office for registration of the sale deed. In the alternative, the plaintiff prayed for refund of the amount of Rs. 90,000/- which according to the plaintiff was paid to defendant no. 1 by way of consideration amount.

2. Learned counsel for the appellant submitted that both the Courts

have erroneously dismissed the plaintiff's suit on the ground that there is no prayer for specific performance of the contract. He submits that defendant no. 1 had already put her thumb impression on the document and when the parties attended Registrar's office, registration certificate number was also allotted to the document. However, he submits that since the defendant no. 1 refused to accept that she had received the consideration amount, and she refused execution of the sale deed, the document was not registered. He therefore submits that prayer for mandatory injunction is in the nature of specific performance seeking directions against defendant no. 1 to register the document.

3. Learned counsel for the appellant further submits that since the defendant no. 1 refused to execute the document, the plaintiff's father had issued notice to defendant no. 1 calling upon her to execute the document. He submits that though sufficient evidence was produced, both the Courts failed to accept the plaintiff's case regarding execution of the sale deed by defendant no. 1. With reference to the payment of consideration amount, learned counsel for the appellant submitted that two witnesses were examined by the plaintiff to support his contentions regarding payment of consideration amount by cash which were paid by the said witnesses. He submits that the oral evidence led

by the plaintiff supports his case that the entire consideration amount was paid to defendant no. 1. He submits that defendant no. 1 illegally executed the sale deed in favour of defendant no. 2. He submits that in view of the acceptance of the entire consideration amount and the document which was tendered for registration, the plaintiff was entitled to mandatory injunction which was in the nature of specific performance for getting the document of sale deed executed and in his favour. He thus submits that the second appeal would raise substantial questions of law on the plaintiff's right to seek execution and registration of the document of sale deed in his favour. He submits that incorrect appreciation of the evidence on record regarding payment of the entire consideration amount also raises substantial question of law.

4. I have perused both the judgments and pleadings. Both the Courts have concurrently held that the plaintiff failed to prove any execution of the document of sale deed in his favour. On examination of the evidence on record, both the Courts concurrently disbelieved the plaintiff's case regarding payment of consideration amount by cash. Admittedly, no receipt of payment was produced on record. A perusal of the reasons recorded by both the Courts indicate that on thorough examination of the pleadings and evidence on record, both the Courts

have refused to accept the plaintiff's case regarding payment of entire consideration amount.

5. A perusal of the plaint indicates that the only prayer made by the plaintiff is seeking mandatory injunction directing defendant no. 1 to execute and register the sale deed in favour of the plaintiff. The plaintiff has not sought any directions against the sale deed validly executed in favour of defendant no. 2. Considering the pleadings and prayers in the plaint, the arguments raised on behalf of the appellant that the prayer includes the prayer for specific performance cannot be accepted. The prayer in the suit is only for the mandatory injunction directing the defendant no. 1 to register the sale deed which according to the plaintiff was tendered for registration before the learned Registrar. In the alternative, the plaintiff has prayed for refund of the amount of consideration.

6. The case of the plaintiff regarding producing the document before the Registrar for registration and refusal of defendant no. 1 to accept her intention of executing the sale deed and acceptance of the consideration amount itself falsifies the plaintiff's case that defendant no. 1 had any time agreed to sell the suit property to the plaintiff. Both

the Courts have therefore rightly disbelieved the plaintiff's case regarding execution of the document of sale deed in his favour. Even otherwise, the plaintiff has neither pleaded and proved any concluded contract nor prayed for any specific performance of the contract. Thus, both the Courts have rightly disbelieved the plaintiff's case and refused to grant any mandatory injunction.

7. The arguments raised on behalf of the appellant regarding payment of consideration amount is based on facts and would require re-appreciation of pleadings and evidence on record which is not permissible under section 100 of Code of Civil Procedure, 1908. I do not see any illegality or perversity in the reasons recorded by both the Courts, is not accepting the plaintiff's case about payment of entire consideration amount.

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

9. In view of dismissal of second appeal, Civil Application No. 927 of 2019 is disposed of as infructuous.

[GAURI GODSE, J.]