

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 661 OF 2022
WITH
CIVIL APPLICATION NO. 185 OF 2019

Hanumant Keshav Atakare And Ors. ... Appellants
Versus
Dattu Namdeo Ghodake ...Respondent

Mr. Shikur Gafur Kudle for the Appellants.
Mr. Samir Kumbhakoni for the Respondent.

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CORAM : M.M.SATHAYE, J.
DATE : 16th FEBRUARY 2024

PC. :

1. Heard learned counsel for the parties. Perused the record. Few facts shorn of unnecessary details, for disposal of this appeal, are as under.

2. The Appellants are original Defendants. The Respondent filed Regular Civil Suit No. 119 of 2013 against the Appellants seeking specific performance of contract under registered agreement to sell dated 20.12.2008 with alternate prayer of refund of Rs.1,90,000/- with interest. Agriculture land Gat No. 535 to the extent of southern side 81 R, situated at village Degaon (Waluj), Taluka-Mohol, District – Solapur is the suit property. It appears that the Appellants though appeared in the suit, did not file any written statement and the suit has proceeded without written statement as per order passed by the

Trial Court. The suit came to be decreed on 08.03.2016 by the Civil Judge, Junior Division, Mohol thereby directing that on depositing of balance consideration under the subject contract, and further subject to obtaining requisite permission for the sale of suit property from the Competent Authority, the Appellants are directed to execute sale deed in favour of the Respondent. It must be noted here and now that the learned Trial Judge has passed conditional decree of specific performance, subject to condition of obtaining requisite permission for the sale of suit property.

3. The Appellants filed Regular Civil Appeal No. 109 of 2016 in the District Court at Solapur. Before the Appellate Court, the Appellants raised contention about the Respondent being a money lender without licence and that it was really money lending transaction and that the Appellants have repaid loan of Rs.1,00,000/- together with interest. The Appellate Court after hearing both sides and on appreciation of the evidence on record and after considering arguments including above contention, concluding that the Appellants have not been able to prove the said contention.

4. The Appellate Court by the impugned Judgment and Decree dated 30.06.2018 dismissed the appeal and allowed cross objection filed by Respondent/Plaintiff against observations of the Trial Court that possession was not handed over to the Respondent. In the result, Appellate Court modified the decree of the Trial Court thereby decreeing the suit and restraining the Appellants from interfering or

obstructing the possession of the Respondent/Plaintiff over the suit property given pursuant to suit agreement.

5. Judgment of Trial Court shows that on appreciation of evidence of plaintiff and supporting witnesses viz. a scribe and a stamp paper vendor alongwith registered agreement, the Trial Court held that suit agreement, its execution and payment of consideration is proved. Judgment of Appellate Court shows that these findings of facts are confirmed.

6. Learned counsel for the Appellants, Mr. Kudale submitted that the transaction in question cannot be completed unless necessary permission under the Bombay Tenancy and Agricultural Lands Act, 1948 is obtained, about which there is contemplation in the suit agreement. The second submission of the learned counsel is that the Appellate Court was not justified in disbelieving the Appellants about their case of this transaction being illegal money lending and repayment of loan by the Appellants.

7. So far as first submission is concerned, suffice to say that the decree passed by the Trial Court and confirmed by the Appellate Court is a conditional one. It includes necessary provision in as much as clause 3 of the Judgment and Decree of the Trial Court, specifically holds that after the necessary permission is obtained for sale of the suit property, the sale deed will be executed. In that view of the matter, no further engagement with the first submission is necessary.

8. So far as the second submission that the Respondent Plaintiff was engaged in illegal money lending business and the transaction was in fact that of a loan which was repaid by the Appellants, is concerned, I have perused the reasons given by the Appellate Court to disbelieve said case. In paragraph 17 of the impugned Judgment of the Appellate Court, it is clearly held that the Appellants have failed to give any instances of money lending transaction done by the Respondent/Plaintiff before or after the execution of the suit agreement and therefore except for bare allegation, there is nothing on record, to substantiate the said case. This is held at the first appellate stage, which is still a fact finding court. This aspect being purely a question of fact, does not really fall for consideration of this Court while exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908 and which is limited by substantial question of law.

9. In view of the aforesaid facts and circumstances, no question of law, much less substantial question of law is involved in this appeal and no interference is called for. The second appeal is accordingly dismissed. No order as to costs. In view of dismissal of second appeal, pending civil application is also dismissed.

10. At this stage, learned counsel for the Appellants seeks stay of the impugned judgment and decree for a reasonable period of time. Record shows that ever since filing of the appeal, no ad-interim or interim stay was ever granted. Learned counsel for the Respondent has opposed grant of any such protection for the first time at the

stage of disposal of the appeal. In that view of the matter, the prayer for stay is rejected.

[M.M. SATHAYE,J.]