

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

**SECOND APPEAL NO.76 OF 2021
WITH
CIVIL APPLICATION NO.974 OF 2019
IN
SECOND APPEAL NO.76 OF 2021**

Amrutlal Himmatmal Jain

...Appellant

Versus

Madhav Narayan Shahane (since deceased)

(a) Sudha Madhav Shahane and Ors.

...Respondents

....

Mr. Darshit Jain for the Appellant.

Mr. Ashok B. Tajane for Respondent Nos.2 and 3.

Mr. Drupad Patil for Respondent Nos.7 and 8.

Ms Suvarna Yadav i/b. Ms Rekha Musale for Respondent Nos.1a to 1d, 5 and 6.

CORAM : SANDEEP V. MARNE, J.

DATED : 22 APRIL 2024.

P.C.:-

1. This appeal is filed challenging the Decree dated 17 August 2017 in Civil Appeal No.267 of 2012. The first Appellate Court has dismissed the appeal and has partly confirmed the decree dated 24 April 2009 passed by the Civil Judge, Senior Division, Alibag in Special Civil Suit No.20 of 2006.

2. The Trial Court had partly decreed the Suit. While rejecting the Plaintiff's prayer for specific performance of the agreement dated 6 October 2004, the Trial Court directed Defendant Nos.2 and 3 to pay the

Plaintiff an amount of Rs.50,000/- towards damages. The Decree rejecting specific performance has been upheld by the first Appellate Court. However, on filing of cross objection by Defendant Nos.2 and 3, the first Appellate Court set aside the direction for payment of damages to the extent of Rs.50,000/- while confirming the rest of the Decree.

3. After arguing the appeal for some time Mr. Jain, the learned counsel for the Appellant, Mr. Patil, the learned counsel for Respondent Nos.7 and 8, Mr. Tajane, the learned counsel for Respondent Nos.2 and 3 and Ms Musale, the learned counsel for Respondent Nos.5 and 6, it is agreed that the disputes between the parties can be amicably resolved if Respondent Nos.7 and 8 pay to the Plaintiff an amount of Rs.3,00,000/-, on receipt of which the Appellant-Plaintiff shall give up his claims in respect of the suit property against all Respondents. Accordingly, Mr. Patil, has handed over a Demand Draft for Rs.3,00,000/- to Mr. Jain.

4. In view of the agreement prevailing between the parties, the impugned Decree passed by the Trial Court and first Appellate Court shall stand modified to the extent that the Plaintiff is entitled to receive Rs.3,00,000/- towards his claim in respect of the suit property. Demand Draft for an amount of Rs.3,00,000/- is paid by Respondent Nos.7 and 8 to the Plaintiff, receipt whereof is acknowledged by the Plaintiff. In that view of the matter, the Plaintiff shall not have any claim in respect of the suit property against any of the Respondents. Similarly, none of the Respondents shall have any claim against the Plaintiffs.

5. With above directions, the appeal stands disposed of.
6. In view of disposal of the Second Appeal, the Civil Application does not survive and accordingly disposed of.

SANDEEP V. MARNE, J.