

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.317 OF 2017
WITH
CIVIL APPLICATION NO.179 OF 2018
IN
SECOND APPEAL NO.317 OF 2017

Latika Chandrakant Sawant

...Appellant/
Applicant

Versus

Bhima Dagadu Shinde & Ors.

...Respondents

Mr. Ajay Joshi for the Appellant/Applicant.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : JANUARY 24, 2024

P. C. :

1. Being dissatisfied with the Judgment dated 25th November, 2016 by which the Appeal by the original Plaintiff stands dismissed, the original Plaintiff is before this Court.

2. Regular Civil Suit No. 415 of 2011 was instituted by the Plaintiff seeking specific performance of an agreement of sale dated 5th August, 1997. The case of the Plaintiff was that the father of the Defendants, one Dagadu Mahadev Shinde was the owner of the suit land. That, he was in need in money in the month of August, 1997 and gave proposal to the

Plaintiff for purchase of suit land, which was accepted by the Plaintiff. The parties negotiated and the purchase amount was fixed at Rs. 25,000/-. Accordingly, registered agreement of sale was executed. One of the condition of the sale was that the father of the Defendant was to obtain the necessary permission from Competent Authority for execution of the sale deed and the said transaction had to be completed within a period of one month from the date of sanction of permission by the Competent Authority. That the Plaintiff paid the entire consideration of Rs. 25,000/- on the date of agreement and was put in possession of the suit land. It was further pleaded that the Plaintiff requested the father of the defendant to obtain the permission and was assured by the father of the Defendant that he would obtain necessary permission. In the mean time, in the year 2001 the father of the Defendant expired and thereafter the Plaintiff was pursuing with the legal heirs of the vendor for bringing necessary permission. It is pleaded that the Defendants avoided to obtain necessary permission for execution of the sale deed and as such, notice was issued on 7th February, 2011.

3. The suit came to be resisted by the Defendants denying the execution of the agreement of sale as also the payment made. It was contended that after the death of the father, the name of the legal heirs came to be entered into revenue records. It was contended that there was

no legal necessity for sale of the suit property.

4. The parties went to the trial and the Trial court framed the issue as regards the execution of the sale deed, readiness and willingness of the Plaintiff and about limitation. The Trial Court held that the Plaintiff has established the factum of execution of the sale deed, and that the Plaintiff is not ready and willing to perform his part of the contract. The Trial Court negated the issue of limitation and dismissed the suit.

5. As against the Judgment of the Trial Court, the original Plaintiff preferred Regular Civil Appeal No. 153 of 2013. The Appellate Court reversed the findings as regards the readiness and willingness as also the findings on the issue of limitation. The Appellate Court considering the facts of the case, held that the Plaintiff is not entitled to the equitable relief of specific performance for the reason that the suit is filed after 14 years from the date of agreement of sale.

6. Heard Mr. Ajay Joshi, learned counsel for the Appellant.

7. Learned counsel for the Appellant submits that the substantial question of law which arises is whether the Appellant was justified in not exercising the discretion in favour of the Plaintiff despite holding that the Plaintiff was ready and willing to perform his part of the contract and that the suit is within limitation. He further submits that as per Article 54 of

the Limitation Act, the suit is required to be filed within a period of three years in event date is fixed for performance and in event when no such date is fixed within a period of three years when the Plaintiff has notice that performance is refused. He submits that the suit being within limitation, the discretion ought to have been exercised in his favour.

8. Considered the submission and perused the record.

9. The agreement of sale has been executed between the parties in the year 1997. The judgment of the Trial court and the Appellate Court would indicate that sale deed was to be executed within a period of one month after the permission for execution of the sale is obtained from the Competent Authority. Being owner of the suit land, it was for the Defendant to obtain permission for execution of the sale deed. Even if the Defendant had not taken any steps to obtain necessary permission, for period of 14 years there was total inaction on part of the Plaintiff. In the meantime the vendor expired on 26th October, 2001 and the suit property was mutated in the name of his legal heirs. The document was executed in the year 1997 and for a period of 14 years, no steps were taken by the Plaintiff. It is only in the year 2011 that the notice came to be issued calling upon the legal heirs of the original vendor to execute the sale deed. Pertinently, before the Trial Court the pleading was that the Defendant started to avoid to comply with his part of the obligation. However, the

exact date is not pleaded and it appears that, after a period of ten years from death of original vendor, in the year 2011, the notice for specific performance was issued to the legal heirs of the Defendant. Even after the expiry of the father of the Defendant, no steps were taken by the Plaintiff in furtherance of the agreement for sale. Neither notice was sent to the original vendor nor the suit was filed for specific performance, during the life time of the vendor.

10. The response that it was for the Defendant to obtain the permission from the Competent Authority cannot be an explanation for inaction of almost 14 years. It was also necessary for the Plaintiff to take prompt and effective steps lest the equitable relief be denied to the Plaintiff. In the present case, even though it is held that the suit of the Plaintiff is filed within a period of three years and the Plaintiff has been ready and willing to perform his part, the relief being equitable relief, it is not the mandate of law that the decree for specific performance should follow. Section 20 of Specific Relief Act provides that the Court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the Court should not be arbitrary. The Appellate Court has refused to exercise the equitable jurisdiction in favour of the Plaintiff considering total inaction of the Plaintiff for the period of 14 years. Considering the facts of the present case, it would be inequitable to grant decree of specific

performance which would cause hardship to legal heirs of original vendor. The discretion exercised by the Appellate Court cannot be said to be arbitrary.

11. Having regard to the discussion above no substantial question of law arises in the Second Appeal.

12. Appeal stands dismissed.

13. In view of dismissal of Second Appeal, Civil Application does not survives for consideration and the same is disposed of as such.

(SHARMILA U. DESHMUKH, J.)