

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

**SECOND APPEAL NO.685 OF 2017
WITH
SECOND APPEAL NO.252 OF 2017
(NOT ON BOARD. TAKEN ON BOARD)**

Mohamad Yakub Gafurso Momin ...Appellant

V/s.

Babasaheb Mohamad Bagwan ...Respondent

Mr. Javeed Hussein a/w. Mr. Mubashir Hussein, Munibah Iram i/b Hussein
& Company for the Appellant.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 31st JANUARY, 2024.

P. C.:-

1. Being dissatisfied by the common judgment dated 7 July 2016 passed by the appellate Court in Regular Civil Appeal No.228/2002 and Regular Civil Appeal No 229 of 2002 confirming the common judgment of the Trial Court dated 22nd April, 2002 dismissing Special Civil Suit No 618 of 1995 and Regular Civil Suit NO 1480 of 2000, the original plaintiffs are before this Court. As common issues were involved, with consent of learned counsel for Appellants both the Appeals were taken up for hearing and disposed of by this common order.

2. Both the suits were instituted by the Plaintiffs seeking specific performance of the agreements for sale. The case of the plaintiffs was that the Defendant is the owner of property bearing CTS No 725/1 ad-measuring 774 square feet situated within the limits of Kolhapur Municipal Corporation. The defendant agreed to sell a portion of 480 sq. ft. of the house property bearing CTS No.725/1 for which an earnest amount of Rs.20,000/- was paid and an agreement for sale in presence of attesting witnesses Sikandar Sayyad and Dr. Dastgir Momin was executed. As per the plaintiff the Sale Deed was to be executed within one month by evicting the tenant viz., Abdul Raheman Shaikh residing in the suit premises and by satisfying the loan of the Ravi Co-operative Bank to the tune of Rs.20,000/-

3. On the same date i.e. on 25 September 1992 defendant agreed to sell remaining portion of 294 sq. ft. of the said house property to the plaintiff for a consideration of Rs.87,000/- for which earnest amount of Rs.5000/- was paid and a separate agreement of sale in the presence of attesting witnesses Sikandar Sayyad and Aurangjeb Mehtar was executed. The attesting witness Sikandar Sayyad was the tenant in one room and as per the Agreement of Sale defendant had to evict him and repay the loan of Rs.20,000/- to Ravi Co-operative Ban and to execute the Sale Deed within

one year. It was pleaded that as the defendant failed to comply with the his obligations under the two Agreements for Sale and no Sale deed was executed notice dated 24th September 1993 was issued to the defendant demanding performance, which came to be refused.

4. Defendant resisted the suit by filing written statement denying the execution of the Agreements for Sale. According to the defendant, the transaction between the parties was loan transactions and signatures were obtained by the plaintiff on certain blank papers and subsequently the plaintiff has fabricated the signed papers and stamp papers and prepared agreements for sale with the help of attesting witnesses, who are his close relatives. It was further pleaded that the suit property was given by the father of the defendant to his wife as *meher*, which fact the plaintiff was fully aware as he resided just in front of the property.

5. Parties went to trial. The Trial Court after considering the evidence which has come on record came to the conclusion that there is no genuine agreement for sale executed between the parties and that the transaction was money transaction. The Trial Court further held that the stamp papers and other papers signed by the defendant for security came to

be misused by the plaintiff. As such the Trial Court held that the plaintiff is not entitled to specific performance. The Trial Court further held that as the transaction of agreement of Sale as well as the execution of the agreements is not proved by the plaintiff therefore the payment of earnest amount of Rs.20,000/- and Rs.5000/-could not arise and as such even the alternative relief of refund of earnest money was rejected by the Trial Court. As against the Judgment of the Trial Court original plaintiff filed Regular Civil Appeal No.228/2002 and Regular Civil Appeal No 229/2002 which came to be rejected by the Appellate Court.

6. Heard Mr. Javeed Hussein learned counsel for the Appellant.

7. Mr. Hussein, learned counsel appearing for the appellant submits that the Trial Court as well as the Appellate Court has failed to apply the relevant provisions of the Specific Relief Act, which if applied would decree the Suit in his favour. He submits that the discretion which was required to be exercised under Section 20 of the Specific Relief Act was not exercised and as such substantial question of law which has arisen in the present case is the perversity in the findings of the Trial Court and the Appellate Court. He submits that the Agreements for Sale executed

between the parties shows purchase consideration as far as first property is concerned as Rs.1,28,000/- and as far as the second property is concerned Rs.87,000/- He submits that if the transaction was a loan transaction there was no necessity for mentioning the purchase consideration in the document. He submits that even if it is held that the transactions in question were not sale transactions the alternative relief of refund of earnest money ought to have been granted.

8. Considered the submissions and perused the record.

9. The Trial Court has considered the two Agreements for Sale of which the specific performance was sought. The Trial Court noted that both these agreements of sale have been partly scribed on 25th September 1992 and has been completed on 2nd October 1992 through a different person. Noticing that in respect of the same property, there are two agreements of sale which were partly executed on 25th September 1992 and completed on 2nd October 1992, the Trial Court held that the sale does not appear to be a genuine sale transaction. The Trial Court also noticed that first 4 pages of both the agreements are in the handwriting of one person and remaining pages are in the handwriting of different persons. Nothing

has been demonstrated before the Trial Court or Appellate Court to justify as to why two different agreements were executed in respect of different portions of the same property and why these agreements were not executed at one and the same time and were partly scribed on 25th September 1992 and completed on 2nd October 1992. The Trial Court also noticed that there are no signatures of the defendant on the stamp papers and his signatures are at the end of the plain papers where recitals of agreement had been completed. The factum of the attesting witnesses being close relatives of the Plaintiff was not disputed before the Trial Court. Considering the above facts which indicates that both the agreements were in different handwriting, being executed on different dates and the signature of the defendant appearing at the end of the plain paper where recitals of the agreement has been completed, the Trial Court refused to exercise discretion in favour of the plaintiff. The Appellate Court accepted the findings of the Trial Court and dismissed the appeals.

10. The Trial Court has held that the agreements for sale cannot be said to be a genuine sale transaction, which finding has been upheld by the Appellate Court. The Courts have held that the entire claim of the Plaintiff in both the suits appears to be based on false and fabricated documents.

Learned Counsel for the Appellant has failed to demonstrate any perversity in the findings. Once it has been held that the agreements for sale were not sale transactions, there was no question of granting specific performance of such agreements or even grant of alternative relief of refund of earnest money. There are concurrent findings based on documentary evidence which does not suffer from any perversity. The submissions of learned counsel for the applicant would require this Court to re-appreciate the evidence which has come on record which is impermissible under Section 100 of CPC.

11. Having regard to the discussion above, no substantial question of law arises. Appeals stand dismissed.

(SHARMILA U. DESHMUKH, J.)