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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 402 OF 2020
WITH
INTERIM APPLICATION NO. 8478 OF 2024**

Shri Vilas Dhondiba Mane ... Appellant/Applicant

Vs.

Shri Kondiba Nayaku Patil and Another ... Respondents

Mr. Umesh Mankapure for the Appellant.

CORAM : GAURI GODSE, J.

DATE : 14th OCTOBER 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 his suit for specific performance.

2. Learned counsel for the appellant submits that since the signature on the suit agreement is not disputed it was the defendants burden to prove that he had not executed any agreement. He submits that the defendants failed to enter into witness box and lead any evidence to support their contention that they never intended to execute any agreement for sale in favour of the plaintiff.

3. Learned counsel for the appellant further submits that the plaintiff led oral evidence by examining his son. Hence, the oral evidence on behalf of the plaintiff ought to have been accepted by both the courts in support of the plaintiff's contention that defendant had agreed to sell the suit property. He thus submits that the Second Appeal would require consideration on the point of incorrect appreciation of the pleadings and evidence on record.

4. I have perused the impugned judgments. It is not in dispute that defendant no.1 is deaf and dumb and both the defendants are gullible persons. Therefore, it was necessary for the plaintiff to prove the contents of the agreement. The First Appellate Court held that there were three witnesses who had signed the suit agreement, however the plaintiff failed to examine any of the witnesses in support of the plaintiff's case that defendants had agreed to sell the suit property.

5. The plaintiff failed to enter into the witness box and face any cross examination. The only evidence led on behalf of the plaintiff was by examining his son. The First Appellate Court has further referred to the documents and held that the plaintiff also failed to examine the scribe in support of the contents of the documents.

Both the Courts after examining the evidence on record held that the plaintiff failed to discharge his initial burden in support of the contents of the documents.

6. So far as the defendant no. 1 being deaf and dumb person and defendant no. 2 also a gullible person is not in dispute. Though the defendants failed to enter into the witness box and lead oral evidence, execution of the agreement for sale has been disputed by the defendants. Hence, both the Courts rightly held that it was the plaintiff's burden to prove the genuineness of the contents of the document, that the defendants had executed an agreement for sale in favour of the plaintiff. Both the Courts held that merely examining plaintiff's son as a power of attorney holder cannot be accepted as sufficient evidence in support of the genuineness of the terms and conditions of the document.

7. A perusal of the reasons recorded by both the courts indicate that the entire evidence is thoroughly examined by both the courts. The grounds raised on behalf of the appellant would require re-appreciation of the pleadings and evidence on record which is not permissible under Section 100 of the Code of Civil Procedure, 1908.

8. I do not see any illegality or perversity in the reasons recorded

by both the Courts. The Second Appeal does not raise any question of law. Hence Second Appeal is dismissed.

9. In view of the disposal of the Second Appeal, Interim Application No. 8478 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]