



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

SECOND APPEAL NO. 564 OF 2007

Ratan s/o Natthuji Karnewar,
aged about 37 years, Occ. Business,
R/o Santra Market, Nagpur.

...APPELLANT

Versus

Kailash s/o Hiralal Verma,
aged about 60 years,
R/o Juna Jailkhana, Lodhipura, Nagpur.

...RESPONDENT

Shri Rohit Joshi, Counsel for the appellant.
None for the respondent.

CORAM : ANIL L. PANSARE, J.
DATE : MARCH 5, 2024

ORAL JUDGMENT :

The appeal has been admitted on the following
substantial question of law :

“Whether it was necessary for the defendant to have placed on record the sale-deed while raising a plea that he has sold the property to one Tukaram and whether the appellate court was justified in refusing to pass a decree for specific performance on the ground that the property has been sold to Tukaram when no documentary evidence was placed on record ?”

2] Having heard Shri Joshi, learned Counsel for the appellant, it transpires that the appellant/plaintiff had filed a suit for specific performance of agreement to sell/contract dated 6/9/1995 in Regular Civil Suit No. 3247/2001. The trial Court, vide judgment and decree dated 4/3/2002, has refused to grant specific performance of contract, but passed a decree for return of earnest money along with interest @ 9% per annum. The appellant preferred appeal in Regular Civil Appeal No. 166/2002, which came to be dismissed vide judgment dated 22/12/2006, which is under challenge.

3] The First Appellate Court noted, from the evidence of the appellant, that he indeed entered into agreement to sell with the respondent/defendant in respect of the suit plot. The Court then noted that subsequent to execution of agreement to sell, the respondent sold the suit plot to one Tukaram Maraskolhe in the year 1996, i.e., prior to lodging of the present suit. This has been admitted by the appellant. Accordingly, the Court noted that this fact having been within the knowledge of the appellant, he ought to have taken steps to

join the purchaser Tukaram Maraskolhe as party defendant in the suit.

4] The learned Counsel for the appellant submits that in absence of copy of sale-deed, the evidence that respondent has sold the suit plot to Tukaram Maraskolhe is inconsequential. He submits that the respondent ought to have produced copy of sale-deed in support, and having failed to do so, it was not necessary to add Tukaram Maraskolhe as party defendant in the suit.

5] I do not find merit in the contentions inasmuch as the aforesaid fact was elicited from the mouth of the appellant, meaning thereby, that he was fully aware of the fact that the suit plot has been already sold to Tukaram Maraskolhe.

6] The appellant could have either himself obtained certified copy of sale-deed from the Sub-Registrar's office or could have called upon the respondent to produce the same. Having not done so, he cannot take a plea of absence of document.

7] In the circumstances, until the aforesaid sale transaction is challenged and successfully set aside, granting relief of specific performance of agreement under question will only create multiplicity of proceedings. The Courts below have, therefore, rightly exercised discretion against granting specific performance of contract and have rightly allowed alternate prayer of refund of earnest money.

8] The substantial question of law is answered accordingly. There is no merit in the appeal.

9] The appeal is dismissed.

JUDGE

Sumit