



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO. 358 OF 2022

Smt. Sushila Sahebrao Sonarkhan (Dead) and another
VS.
Sau. Shalini Shridharrao Pawar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr A.R. Ingole, Advocate for appellants.
Mr. N.B. Kalwaghe, Advocate for respondent.

CORAM : G.A. SANAP, J.
DATE : JANUARY 11, 2024.

Heard learned Advocates for the parties at the stage of admission. The appellants are the original defendants and respondent is the original plaintiff. It is pointed out that the appellant No.1 died after the decision of the First Appellate Court but before filing the second appeal.

2. Appellant No.2 had challenged the judgment and order dated 31.03.2021 passed by the learned District Judge, Achalpur whereby the appeal filed by the appellants against the judgment and decree passed by the learned Civil Judge, Senior Division Daryapur came to be

dismissed. In this order, the parties would be refereed by their nomenclature in the plaint.

3. It is the case of the plaintiff that the defendants agreed to sell the suit land to her on 07.12.2011 for total consideration of Rs.4,74,375/-. The earnest note was executed by the defendants after accepting the part consideration of Rs.1,25,000/-. The defendants had agreed to apply for permission before the Revenue Authority to transfer the suit land to the plaintiff. Permission was granted. The plaintiff contended that she has been ready and willing to perform her part of contract but defendants for one reasons or the other avoided to perform their part of contract. It resulted into filing of the suit for specific performance of contract.

4. The defendants opposed the suit. They have denied the transaction of sale. According to them, it was money lending transaction. The agreement was by way of security. Learned Judge of the Trial Court on appreciation of the evidence decreed the suit filed by the plaintiff for specific performance. The appeal filed by the defendants came to be dismissed.

5. It is seen that the courts below have recorded the concurrent findings of facts in favour of the plaintiff. I have gone through memo of appeal. The defence of the defendants with regard to the money lending transaction was rejected because the evidence adduce was found insufficient. The earnest note at Exh. 30 has been accepted as document of transaction between the parties by learned Courts below. The permission for sale of the land was obtained by the defendants. It is also seen that the plaintiff complied the condition by depositing an amount of Rs.96,500/- with Sub Divisional Officer, Daryapur. On going through the record and proceedings and particularly the findings of fact recorded by courts below, I am of the view that no substantial question of law arises in this appeal. The grounds of challenge in the appeal clearly indicate that it is nothing but challenge to the concurrent findings of facts recorded by the courts below. On going through the record, I am satisfied that there is no perversity in the findings of fact recorded by the courts below.

6. In view of this, I am of the view that there is no substance in the appeal. Accordingly, Second Appeal is **dismissed**.

7. The application (Civil Application) No.1425/2023 filed for leading additional evidence, in view of above stands rejected.

8. Second Appeal stands **disposed of** with no order as to costs.

(G. A. SANAP, J.)

Manisha