



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.07 OF 2018

Kishor S/o Bhagwatiprasadji Murarka,
aged about 60 years, Occu: Business,
R/o Laharinagar, Near Lahari Kirana
Stores, Bachelor Road, Wardha, Tashil
and District Wardha.

.... Appellant(s)

// VERSUS //

Omprakash S/o Govindramji Saraf
aged about 70 years, Occu: Business,
R/o Sharda Glass, Opposite Ambedkar
Garden, Tahsil and District Wardha

.... Respondent(s)

Mr. S.S. Voditel, Advocate for the appellant

Mr. S.P. Dharmadhikari, Senior Advocate a/b Mr. R.K. Joshi, Advocate for
the Respondent-sole

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT

: 11/07/2024

DATE OF PRONOUNCING THE JUDGMENT

: 10/10/2024

JUDGMENT :

1. Heard at the admission stage with the consent of learned
counsels for both the sides.

2. This appeal is preferred by the appellant/original defendant against the judgment and decree passed by learned Principal District Judge, Wardha in Regular Civil Appeal No.216 of 2012 dated 28.09.2017 arose out of the judgment and decree dated 29.03.2011 passed by 2nd Joint Civil Judge Senior Division, Wardha in Special Civil Suit No.27 of 2002, by which the suit of the plaintiff for specific performance of contract was decreed.

3. The brief facts are as follows:

(i) The agricultural land, bearing Survey No.55/4 situated at Nalwadi, Tahsil and District Wardha, out of it, plot No.14 admeasuring 5200 sq. feet, is the subject matter of the suit.

(ii) The plaintiff contended that he and the defendant are the businessmen and they are belonging to one and same community. They are relatives of each other. The plaintiff is doing the business of selling and purchasing of scrap materials and the defendant is doing the business of brick kiln and transport business of supply of goods etc.

(iii) The plaintiff was running contractor-ship business of construction of houses. He had lot of experience about quality material required for it. The defendant requested to the plaintiff to guide him for construction of his house. The plaintiff helped defendant for construction of house. As per the directions of the defendant, many times plaintiff used to pay the labour charges and used to purchase the materials by his own funds required for construction that house. There were many financial transactions between the plaintiff and the defendant. The accounts between them were settled on 10.12.1993 in the presence of witnesses Shri Govinda Bawankar and Shri Purushottam Goinka. An amount of Rs.3,39,883/- was outstanding against the defendant. It was reduced into writing and signed by both of them.

4. The defendant requested the plaintiff to purchase the suit plot, as he was not having sufficient funds to repay that amount. Accordingly, the price of suit property was settled as Rs.1,24,800/-. Thus, the said amount was adjusted in the total outstanding

amount of Rs.3,39,883/-. The defendant agreed to sell the suit property to the plaintiff. That time, the defendant said that there is brick kiln of his brother in the suit property and it will require some time to remove. The said contract of sale of suit property was reduced into writing on the stamp paper of Rs.20/- on 25.01.1996 in the presence of witnesses Subhash Jain and Sanjay Mandal. It was agreed to execute the sale deed in the month of December-2000. The plaintiff requested to the defendant from time to time to execute the sale deed in the year 2001. In June-2001, the plaintiff noticed that the brick kiln in the suit property was removed. Therefore, the plaintiff requested to defendant to execute the sale deed of suit property as agreed by him, but the defendant did not respond.

5. Therefore, the plaintiff sent a notice dated 08.06.2001 by RPAD and requested defendant to execute the sale deed of the suit property. The defendant replied to notice and denied the execution of contract of sale. The plaintiff, therefore, filed the suit for specific performance of contract.

6. The defendant denied the material contentions raised in the plaint. He admitted the fact of construction of his house. It is contended that he is having lot of experience due to various businesses and therefore, there was no need for him to request the plaintiff to help him for construction his house. He denied the transactions between them and contended that he is a building material supplier and therefore, it was not necessary for him to purchase any material for his house from others. The plaintiff never paid labour charges. He also denied the signature on the contract of sale by contending that it is a fabricated signature made by the plaintiff. The defendant obtained the loan from the Life Insurance Corporation of India (LIC) for construction of house and therefore, there was no need of any monetary help from the defendant for construction of his house. It is prayed to dismiss the suit with costs.

7. The learned Trial Court held that the contract of sale is proved by the plaintiff, he was ready and willing to perform his part of contract and the suit was filed within limitation. The suit of the plaintiff was decreed.

8. The First Appellate Court dismissed the first appeal filed by defendant after re-appreciating entire evidence under its correctional jurisdiction.

9. In this appeal, this Court, vide order dated 24.04.2018, accepted the request of the learned counsels appearing for the appellant to list the appeal for final hearing. As per the request of the learned counsel for both the parties, the appeal is heard at admission stage.

10. The learned counsel for the plaintiff submitted that the both the judgments are illegal, incorrect and requires interference. He pointed out the substantial questions of law raised in the appeal memo and requested to form those substantial questions of law accordingly.

11. The learned counsel for the plaintiff further submitted that the contract of sale (Exh.118) is not admissible in the evidence and hence, it is not a reliable piece of evidence. He further submitted that the evidence of the plaintiff's witnesses is shaken in the cross-examination, therefore, there is gross error and perversity in the

judgments of both the Courts. A negative burden was cast upon the defendant to disprove the case of the plaintiff.

12. Learned counsel for the plaintiff further submitted that the learned trial Court failed to consider Section 16(b) of the Specific Relief Act, 1963 (for short “the S.R. Act”) that, the contract of sale (Exh.118) is a suspicious document and it is fraudulently obtained. Both the Courts failed to exercise judicial discretion as per Section 20 of the S.R. Act. It is also submitted that the suit was not filed within the limitation. He is relying upon the following authorities:

(i) *Parakunnan Veetill Joseph’s Son Mathew Vs. Nedumbara Kuruvila’s Son and others*, 1987 (supp) SCC 340, in which the law is laid down that under Section 20 of the SR Act, the discretion should be exercised by the trial Court by keeping in mind that the motive of suit for specific performance should be taken into account by the Court.

(ii) *Bal Krishna vs. Bhagwan Das*, (2018) 12 SCC 145 in which it is held that the specific performance of contract cannot be granted if the contract is not equal and fair.

(iii) *Mohammadia Cooperative Building Society Limited Vs. Lakshmi Shrinivasa Cooperative Building Society Limited and others*, (2008) 7 SCC 310, in which the law is laid down that the plaintiff's conduct plays an important role in exercising the discretion and the plaintiff must come before the Court with clean hands.

13. The learned Senior Counsel for the defendant strongly opposed the present appeal and submitted that the judgment and decree of the trial Court and first Appellate Court are legal and correct. Both the Courts have appreciated and re-appreciated the evidences properly. The findings of the facts and law are based on the sound reasons. This Court cannot interfere into the said findings, as there is no illegality and perversity in the judgments of both the Courts. He submitted that the substantial questions of law raised by the appellant in the appeal memo cannot arise for consideration, as the judicial discretion is exercised by these Courts and there is concurrent findings of facts against the defendant. This Court cannot enter into the premise of the disputed facts. Both the Courts have held that the contract of sale is proved. He

therefore, submitted to dismiss the appeal with costs. He is relying upon following precedential law.

(i) ***Damodhar Lal Vs. Sohan Devi***, 2016 (3) SCC 78, in which paragraph 14 reads thus:

“14. In [S.R. Tewari v. Union of India](#), (2013) 6 SCC 602, after referring to the decisions of this Court, starting with [Rajinder Kumar Kindra v. Delhi Admn. \(1984\) 4 SCC 635](#), it was held at paragraph 30:

“30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is ‘against the weight of evidence’, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide [Rajinder Kumar Kindra v. Delhi Admn. \(1984\) 4 SCC 635](#), [Kuldeep Singh v. Commr. of Police \(1999\) 2 SCC 10](#), [Gamini Bala Koteswara Rao v. State of A.P. \(2009\) 10 SCC 636](#) and [Babu v. State of Kerala\[\(2010\) 9 SCC 189.\]](#)”

This Court has also dealt with other aspects of perversity.”

(ii) ***Zarina Siddiqui Vs. A. Ramalingam***, (2015) 1 SCC 705, in which it is held that the discretion must be exercised reasonably in accordance with the principles, keeping in mind the equitable remedy.

14. Nobody will dispute the ratio laid down in the above referred authorities cited by both sides. However, each case has to be decided on its own merits and facts of the case are decisive.

15. Perused the impugned judgments, pleadings and evidence of both sides as well as proposed substantial questions of law raised in this appeal. From the judgments of both the Courts, it reveals that the plaintiff's evidences are not shaken in the cross-examination. The important proved document of settlement of account (Exh.117) is materially corroborated by the evidence of independent and reliable witnesses, which shows that the total amount of Rs.3,39,883/- was outstanding against the defendant. The witnesses i.e. Govinda Bawankar (PW 2), Subhas Bisanlal Jain (PW 3) and Chandrakant Bhaiyyaji Unhale (PW 4) deposed about

the transactions between the plaintiff and the defendant. Their evidence is not shaken in the cross-examination.

16. Though the defendant denied his signatures over contract of sale (Exh.118) and settlement of account (Exh.117), those are proved by Sanjay Kotwal (PW 5), a Hand Writing Expert. His evidence is not shaken in the cross-examination.

17. The decisive documents, contract of sale (Exh.118) and settlement of account (Exh.117) are proved. Some other documents and photographs, regarding the earlier suit and criminal cases are also filed on record by both sides, but about that convincing reasons are given by the trial Court and first Appellant Court.

18. The defendant examined himself as DW 1. He examined Ashok Kasap, a Hand Writing and Finger Print Expert (DW 2). The learned trial Court and the learned First Appellate Court rightly held that the evidences of plaintiff's witnesses, regarding execution of the contract of sale and settlement of account, are not disproved by the defendant.

19. The adjustment of consideration amount of sale of the suit property is proved by the plaintiff. The readiness and willingness of the plaintiff is also proved. Both the Courts have rightly held that the suit is filed within limitation. As far as the fabrication of false signature of the defendant over contract of sale is concerned, it is not proved by the evidences of the defendant's witnesses. As per Order VI Rule 4 of the Civil Procedure Code, 1908, it is binding on the defendant to plead fraud in detail. He has not explained as to how his signatures are in existence over Exhs.117 and 118, which are the decisive documents, which establishes his legal liability to execute sale deed. The legal right of the plaintiff is proved. The defendant will certainly not suffer by any hardship.

20. The plaintiff has proved his case. The plaintiff's witnesses have no reason to depose false against the defendant. Their evidence is found most natural, probable and acceptable to the both the Courts.

21. From the reasons and findings in both the judgments, it reveals that the trial Court has rightly exercised its judicial

discretion as per Section 20 of the S.R. Act. The plaintiff came in the Court with clean hands. The first Appellate Court did not trace out any perversity in it.

22. To interfere with the findings of both the Courts, there must be some special reasons, which must go to the root of the case to disbelieve it. The reasons and findings on the facts are based on the evidences and convincing reasons which are legal and correct. There is no any perversity in the findings of the both learned Courts.

23. The Hon'ble Supreme Court of India, in the case of *Gurnam Singh vs Lehna Singh*, 2019 (7) SCC 641, held that in second appeal, an error in law or an error as to the procedure must be shown to interfere with the findings of the trial Court or the first Appellate Court.

24. No any illegality i.e. the error of law as well as the error as to the procedure, as per the law laid down in *Gurnam Singh* (supra) as well as *Damodar Lal* (supra) is found. A judicial discretion is

exercised by the trial Courts and therefore, there is no scope to interfere with the judgments of both the Courts.

25. No any substantial questions law arose for determination and decision, as contemplated by Section 100 of the CPC. Therefore, case laws cited by both the sides are not discussed here. The argument of the learned counsel for the defendant is therefore, not acceptable that both the Courts erred in law and facts. As there is no any substantial questions of law needs to be formed and decided, this second appeal cannot be admitted. The appeal therefore, deserves to be dismissed.

26. The appellant had compelled the plaintiff/respondent to face this appeal, without any factual or legal ground for justification. The respondent must have incurred some amount for it. Therefore, the appellant has to pay costs to the respondent. The appeal deserves to be dismissed with costs of Rs.25,000/-. Hence, the following order:

- (i) The appeal is **dismissed**.

(ii) The appellant to pay costs of Rs.25,000/- to the respondent, within a period of three months from today. If the said amount is not paid within three months, the respondent shall be entitled for 9% interest on it, from the date of this judgment.

[SANJAY A. DESHMUKH, J]

The learned counsel for the appellant seeks six weeks' time for extension of *status quo*. The learned counsel for the respondent makes a statement on instructions that he will not press for execution of decree for six weeks. The prayer of appellant is allowed for six weeks only in view of statement of learned counsel for the respondent.

The said statement made by the learned counsel for the respondent shall automatically deemed to be vacated without further order after six weeks.

[SANJAY A. DESHMUKH, J]