



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD
47 SECOND APPEAL NO. 62 OF 2024

Mohini Govind Prusty (Died)

Through Legal Heirs

1. Ajay Kumar Govind Prusty
Age: 53 years. Occu. Business,
2. Prashant Kumar Govind Prusty,
Age: 51 years. Occu. Service,

Both R/o :C-5,Bhagwato Society,
Opp. Shastri Nasgar, Santracruz (W)
Mumbai.

At present both R/o:- 202 — B Wing, Mahatma,
Enclave, Next to Mira Bhayendar,
Sports Complex, Bhayendar (East)
Thane – 401105.

.... APPELLANTS
(Orig. Plaintiff)

VERSUS

M/s. Chintamani Reality,
Suresh Bhavan 2, Shop No. 13,
Chauraha, Aurangabad,
Through : Satish Bhagchand Sethi,
Age 54 years, Occ. Business,
R/o : Chelipura, Aurangabad.

...Respondent
(Orig. Defendant)

...

Mr. Dheple Shantaram Ravji, Advocate for Appellant
Mr. Muthiyan Namit Sunil & Mr. S. R. Nehri., Advocate for Respondent

...

CORAM : ROHIT W. JOSHI, J.
DATE : 7th APRIL, 2025

ORAL JUDGMENT:

1. The original plaintiff, who is owner of the suit property, which is an agricultural land, had entered into agreement to sell dated

27.11.2011 with the defendant for a consideration of Rs.13,00,000/-.

Admittedly, on the date of the agreement a sum of Rs.11,00,000/- was paid by the defendant to the plaintiff. The balance sale consideration was only Rs.2,00,000/-. It is also not in dispute that agreement to sell dated 27.11.2011 is a registered document and simultaneously a power of attorney is also executed by the plaintiff in favour of the defendant on the same date i.e. 27.11.2011.

2. The plaintiff filed a suit for cancellation of agreement to sell and power of attorney on the ground that it was obtained by fraud. The defendant also filed a counter claim seeking specific performance of the contract and for rectification of the agreement to sell.

3. The suit filed by the plaintiff is dismissed and the counter claim is decreed by the learned Trial Court by granting a decree for specific performance of contract in favour of the defendant. The appeal filed by the plaintiff is also dismissed by the learned First Appellate Court. The learned Counsel for the appellant has pressed into service two grounds:-

(a) Firstly, that the agreement to sell is void because admittedly, the defendant / purchaser is not an agriculturist and the suit property is a agricultural land. Under Section 50-B(1) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 provides

that an agricultural land can be sold to a non-agriculturist with prior permission of the Collector. The learned Courts have granted a conditional decree for specific performance of contract. The sale deed is to be executed subject to permission of the competent authority under the said provision. In that view of the matter first contention is rejected.

(b) Secondly, the learned Counsel for the appellant contends that after the judgment and decree dated 14.12.2023 is passed by the learned First Appellate Court, the Collector has refused to grant permission for alienation of the property. The learned Counsel for the respondent strongly disputes the statement. While granting a decree for specific performance of contract the Court is concerned with existence of contract and its enforceability. The Court has held on these aspects in favour of the respondent. The decree is made conditional i.e. subject to permission as contemplated under the Hyderabad Tenancy and Agricultural Lands Act, 1950. Alleged rejection of permission is a subsequent development and issue pertaining to the same can be raised before the learned executing Court. The learned executing Court shall decide the same in accordance with law.

4. With these observations, the Second Appeal stands dismissed. No

order as to costs.

5. Pending civil applications, if any, stand disposed of accordingly.

[ROHIT W. JOSHI J.]

Narwade/