



IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD

SECOND APPEAL NO. 533 OF 2014
WITH
CIVIL APPLICATION NO. 8892 OF 2014
IN SA/533/2014

SYED MUSTAQ ABDUL KARIM (DIED) THROUGH L.RS. SYED
MUJHAT SULTANA AND OTHERS

VERSUS

YASMIN BEGUM SHEIKH JAMEEL AND ANOTHER

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Advocate for Appellants : Mr. Deshpande Dhananjay P
Advocate for Respondent No.1/Caveator : Mr. G. K. Naik
Thigale.

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CORAM : SHAILESH P. BRAHME, J.
DATE : 11.12.2025

FINAL ORDER :-

1. Heard both sides.
2. Appellant/original plaintiff is assailing concurrent findings of facts recorded in non-suiting him for the relief of Specific Performance of Contract and injunction in Special Civil Suit No.27 of 2004.
3. Learned counsel for the appellants submits that substantial question of law is that legally admissible document of agreement to sell which was duly proved by the appellants has been discarded. The Courts below committed perversity when appellant was permitted to lead secondary evidence of

photo copy of agreement dated 12.01.2000 by passing order below Exh.75 which was not assailed by the respondents. It is submitted that not only execution but the contents of the agreement have been proved by leading cogent evidence which is overlooked by Courts below. It is further submitted that the relationship between the parties and the care taken by the appellants in the last days of Najmunnisa has not been properly appreciated. It is submitted that the payment of consideration through the fixed deposit stands dispensed with in peculiar circumstances of the case. It is further submitted that appellants are in possession of the suit properties which is evident by Special Civil Suit No.33 of 2015 filed by the respondents for possession. It is further submitted that the findings recorded in paragraph Nos.19 to 21 by Lower Appellate Court are perverse.

4. While repelling the submissions of the appellants, learned counsel Mr. Thigale would submit that concurrent findings of facts recorded by Courts below are plausible and no perversity has been pointed out. It is submitted that Najmunnisa did not sign the agreement and she was not of good mental health at that time. The contents of agreement have not been proved. Hence, very foundation of the suit is

feeble. It is submitted that the plea taken by the appellants that as the appellants had taken care of Najmunnisa and there was sufficient compliance of the terms of the agreement is unfounded. It is further submitted that there is no material on record to show that appellant was looking after Najmunnisa and she was all the while staying at Neknoor with him. It is submitted that there is absolutely no material on record to show readiness and willingness of the appellants and compliance of so called Samatipatra.

5. With the assistance of the learned counsel, I have gone through original record and proceedings. Learned counsel Mr. Deshpande strenuously submitted that agreement in question is admissible in evidence. The original copy of the agreement dated 12.01.2000 has not been placed on record. A photo copy thereof has not been exhibited by the Trial Court. Appellant examined himself, P.W.1 Abhay Kimbahune – a stamp vendor, P.W.3 Syed Sajedali, P.W.5 Shaikh Shahejada and P.W.6 Saifulla Khan to prove that agreement was executed by Najmunnisa.

6. In the presence of the witnesses, the agreement was given to brother of Najmunnisa, Saifulla Khan. The photo copy of the agreement does not bear signature of Najmunnisa. It is styled as “Samatipatra”. The English translation of the terms

recited in it are reproduced by the Trial Court in paragraph No.6 of the Trial Court's judgment.

7. Appellants had submitted application at Exh.75 in the Trial Court seeking permission to lead secondary evidence of agreement dated 12.01.2000. By order dated 05.09.2005, application was allowed. Respondent did not challenge the order. The photo copy of the agreement was already on record. I find that there is sufficient compliance of Sections 65 and 66 of the Evidence Act so as to make the agreement admissible in evidence. Both Courts below should have read the documents in evidence.

8. However, just because legally admissible evidence is excluded from the consideration by Courts below would not entail the appellants to succeed in the suit. The next question comes that of compliance of the terms of the contract and readiness and willingness. The suit property was once ancestral property. After demise of Syed Abdul Karim, his sons were having equally shares. The share fallen to father of respondent No.1 was entrusted to the appellant/plaintiff. The appellant is the paternal uncle of respondent No.1.

9. The agreement shows that appellant agreed to purchase share of Najmunnisa or shares of respondents for Rs.1,75,000/-. Out of that, earnest of Rs.31,000/- was paid and the document is styled as consent deed "Samatipatra". The balance amount was to be paid by 30.04.2000 by depositing the amount in the fixed deposit in the name of Najmunnisa. The receipts are agreed to be with Saifulla brother of Najmunnisa. The appellant was to maintain Najmunnisa, out of the interest, receivable from the fixed deposit. Failure to pay balance amount in time was to incur penalty of Rs.5,000/- and forfeiture of Rs.31,000/-. These are the broad terms of the agreement.

10. No evidence is led by the appellants to show that after payment of earnest amount, any endeavour is made to deposit the balance amount in fixed deposits in the name of Najmunnisa. It was admitted by the appellant/plaintiff that he did not make any fixed deposits in the name of Najmunnisa. The plea raised by learned counsel Mr. Dhananjay Deshpande that depositing of the amount is treated to be dispensed with as appellant was looking after Najmunnisa has not been specifically pleaded in the suit. That was not the agreement between the parties. The terms of the contract are reduced

into writing and any other interpretation cannot be adopted. Parties have agreed for specific schedule of the payment with default clauses and the consequences. Both Courts below are justified in holding that the appellants failed to comply the terms of the agreement.

11. There is no material on record to show that the balance amount of consideration was ever parted with as per the agreed terms or he was ready and willing to comply the same. Even the payment of earnest amount is not beyond doubt. Both Courts below have rightly recorded that there was no readiness and willingness to perform the contract.

12. The factum of possession of the appellants can be said to be established as respondent has filed Special Civil Suit No.33 of 2015 for possession which is still pending. The appellants can be said to be in possession of the suit property but the question next needs to be addressed is as to relief of injunction claimed by the appellant.

13. Mere factum of possession would not enure to the benefits of the appellants. He failed to perform his part of contract. He was not ready and willing to perform the contract. The suit property had fallen to the share of father of

respondent No.1 which devolved upon the respondents. The possession of the appellants cannot be said to be lawful. Hence, even no relief of injunction can be granted to the appellants.

14. Both Courts below recorded concurrent findings of facts considering the material on record. It is not a case that both Courts below overlooked the recitals of agreement. Appellants cannot succeed on the point of admissibility of the agreement in the suit. The findings of the Appellate Court that Najmunnisa did not reside at Neknoor may not be correct factually but that will not vitiate the final conclusion drawn by the Courts.

15. It reveals from record that agreement was not signed by Najmunnisa. The original agreement has not been placed on record. Najmunnisa was not mentally stable at the relevant time and she was required to be treated. Appellant is brother-in-law of Najmunnisa. In all probabilities, preparing the agreement as "Samatipatra" creates doubt about the intention of the parties. I find no convincing material on record to show that the transaction was agreement to sell. In that view of the matter also, I concur with the view taken by the Courts below.

16. Learned counsel for the appellants has placed reliance on the judgment of Supreme Court in case of ***Zarina Siddiqui Vs. A. Ramalingam Alias R. Amarnathan ; (2015) 1 Supreme Court Cases 705***. I have gone through paragraph Nos.22 and 36 of the judgments. I have already accepted the submissions regarding admissibility of the document and observed that itself is not sufficient to succeed in the appeal. I find that no substantial questions of law are involved in the appeal.

17. Second appeal is dismissed.

18. There shall be no order as to costs.

19. In view of disposal of second appeal, pending civil application does not survive. Civil application as such is disposed of.

(SHAILESH P. BRAHME, J.)

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