



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 170 OF 2024

Mr Prakash S/o Durgadas Lale

VERSUS

Smt Rashida Tayyab Kachwala And Ors

...

Mr. A. M. Gholap, Advocate for Appellant

CORAM : R. M. JOSHI, J

DATE : JULY 29, 2025

PER COURT :

1. This Appeal under Section 100 of the Code of Civil Procedure is preferred by Original Plaintiff against the judgment and decree passed taking exception to the refusal of the First Appellate Court to grant the specific performance of contract in respect of entire suit property.

2. As per settled position of law, unless substantial question of law is involved in the Appeal, Court would not get jurisdiction to entertain the same.

3. It is the contention of Plaintiff in suit for specific performance of contract that agreement to sale is executed by Defendant Nos. 1 and 4 only. It is his contention however, that Defendant Nos. 1 and 4 had

agreed to obtain signatures of Defendant Nos. 2 and 3 on the agreement to sale and in fact the said agreement was executed on behalf of Defendant Nos. 2 and 3 and with their consent.

4. Learned Counsel for the Appellant tried to convince this Court on the aforestated grounds.

5. Trial Court as well as First Appellate Court have held that there is no agreement to sale executed by Defendant Nos. 2 and 3 in favour of Plaintiff. It is not in dispute that Defendant Nos. 1 to 4 are joint owners of the suit property. The agreement to sale is executed only by Defendant Nos. 1 and 4. There is nothing on record to indicate that Defendant Nos. 2 and 3 had authorized the Defendant Nos. 1 and 4 to execute any agreement on their behalf. Thus, it cannot be held that Defendant Nos. 2 and 3, as owners of their respective portion of suit property, agreed to sale the same. In absence of any such agreement with them, question of grant of specific performance does not arise. The evidence on record indicates that Defendant Nos. 1 and 4 independently executed the said agreement to sale and hence, decree could be passed only against

them. It is not possible for this Court to substantiate its view over the findings recorded by trial Court and First Appellate Court.

6. In such circumstances, there is no substantial question of law involved in this Appeal. The findings recorded by the Trial Court and confirmed by the First Appellate Court in this regard being in consonance with evidence on record, require no interference.

7. In view of the above, Appeal stands dismissed.

(R. M. JOSHI, J.)