



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.612 OF 2023
WITH
CIVIL APPLICATION NO.15196 OF 2023
IN
SECOND APPEAL NO.612 OF 2023**

Pappu Yakub Khan,
Age: 40 years, Occu: Construction
R/o: Ward No.1, Millatnagar,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

..Applicant
(Orig. Plaintiff)

Versus

Iqbal Hamid Khan,
Age: 63 years, Occu: Business,
R/o: Ward No.1, Millatnagar,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

..Respondent
(Orig. Defendant)

...

Mr. A. B. Chormal, Advocate for Applicant.
Mr. R. R. Karpe, Advocate for Respondent.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 25th MARCH, 2025.**

ORDER:-

1. The appellant/original plaintiff impugns judgment and decree dated 01.12.2022 passed by District Judge, Shrirampur in Regular Civil Appeal No.17/2017, thereby upholding judgment and decree dated 23.03.2017 passed by Civil Judge, Senior Division, Shrirampur in Regular Civil Suit No.370/2012. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The appellant/plaintiff instituted Regular Civil Suit No.370/2012 contending that his sister is wife of defendant. As

such, he is brother-in-law of defendant. As per defendant's demand, plaintiff advanced him total amount of Rs.1,60,000/-. The defendant failed to repay amount, hence agreed to sell suit plot no.14 admeasuring 291 sq. mtrs. from CTS No.2179 situated at Shrirampur. According to plaintiff, defendant executed agreement to sale in presence of Notary and handed over possession of property to him with assurance to execute sale deed. The plaintiff raised construction of four rooms on plot alongwith shed. He is in occupation of property and regularly paying taxes. Since defendant failed to execute sale deed, legal notice dated 30.10.2021 was issued calling upon him to perform his part of contract, which has been falsely replied by him. Hence, present suit for specific performance of contract with alternate prayer for refund of amount of Rs.1,60,000/- alongwith interest @ 18% per annum.

3. The defendant refuted claim by filing written statement, so also filed counter claim for possession. The defendant disputed execution of agreement dated 06.09.2001 and contended that suit property was purchased by him under registered sale deed dated 02.05.2001 from Yogesh Madhukar Sonawane. Since then he was in possession of plot as owner and fixed wall compound. Thereafter, he constructed rooms and tin shed. The plaintiff owns plot no. 13, which is adjacent suit plot no. 14, owned by the defendant. On plaintiff's request, he was permitted to use

defendant's property, which was vacant. In view of close relationship, plaintiff was permitted to use the same. However, when defendant was in need of property and he asked plaintiff to hand over possession, plaintiff refused to do so and raised false claim as regards to agreement to sale.

4. The Trial Court framed issues based on pleadings of parties, recorded evidence and finally dismissed suit of plaintiff and decreed counter claim of defendant. In result directed plaintiff to hand over possession of suit property to defendant. Aggrieved plaintiff filed Regular Civil Appeal No.17/2017 before District Judge, who has concurred with the findings recorded by the Trial Court. Eventually, dismissed Appeal.

5. Mr. Chormal, learned Advocate appearing for appellant submits that Appellate Court erroneously framed point for consideration as to limitation, although such an issue was not framed by Trial Court. The Appellate Court recorded finding that suit of plaintiff is barred by limitation. He further submits that alternate prayer of plaintiff regarding recovery of money could have been considered. According to him, in counter claim for recovery of possession of suit property, issue of limitation was required to be framed, but Trial Court omitted to frame it. Mr. Chormal would submit that evidence on record is sufficient to establish that notarized agreement to sale was executed by

defendant. Eventually, he seriously objects findings recorded by Courts below and urges to admit appeal.

6. Per contra, Mr. Karpe, learned Advocate appearing for respondent submits that plaintiff has miserably failed to prove execution of agreement to sale, so also payment of Rs.1,60,000/- to defendant. He would point out that plots of plaintiff and defendant are adjacent to each other. The plaintiff is owner of plot no.13, whereas defendant owns plot no.14. The plaintiff is trying to establish his right over property of defendant, which was given in his possession because of close relationship. Mr. Karpe submits that concurrent findings of facts have been recorded by Courts below holding that plaintiff failed to establish execution of agreement to sale. The counter claim is allowed and direction is issued to plaintiff to hand over possession of suit property to defendant.

7. Having considered submissions advanced, it can be observed that thrust of plaintiff's claim is based on alleged agreement to sale placed at Exhibit-62. It is a notarized document. The plaintiff in his cross-examination admits that agreement to sale was not notarized at Shrirampur. He relied upon evidence of PW-3- Advocate N. B. Shaikh from Shrirampur. However, PW-3 admits that document has been notarized at Aurangabad. He admits that without identification of parties, he notarized the document at

Exhibit-62 as per say of witnesses. He admits that defendant was not before him. He could not bring on record notary register of the year 2001 saying that same has been destroyed. The defendant has specifically denied to have put signature on document before Notary. Therefore, merely document is notarized, it does not have sanctity under law.

8. So far as payment of Rs.1,60,000/- by plaintiff to defendant, no evidence is pressed into service that would bring on record particulars of such payment. The PW-2 i.e. brother of plaintiff entered into witness box to support plaintiff on aforesaid aspect, but he admits that no amount was paid in his presence. No documentary evidence regarding payment or particulars like date or amount paid have been established. Admittedly, such payment was not in pursuance to any agreement to sale, but earlier dues is said to be adjusted towards consideration against agreement to sale. There is inconsistency as regards to the purpose of payment of amount to defendant by plaintiff.

9. Although defendant denied signature on document at Exhibit-62, plaintiff has not made any attempt to prove the same either by way of comparison with admitted signature or getting expert evidence. The Appellate Court observed that Stamp Paper was purchased at Aurangabad, whereas parties are residing at

Shrirampur. There is no explanation for such discrepancies. Both Courts on appreciation of evidence, discarded plaintiff's case as regards to execution of document.

10. Apart from aforesaid aspects, agreement to sale is alleged to have been executed on 06.09.2001 and suit is filed on 08.11.2012 i.e. after 11 years and 2 months. No explanation is coming forward as to why plaintiff was silent for all these years. If he had already parted with consideration amount, he would have insisted for execution of sale deed, but no such evidence explaining delay in instituting proceeding for specific performance is coming forward.

11. In light of aforesaid factual scenario, when both Courts have concurrently held that plaintiff failed to prove agreement to sale and fact that suit for specific performance of contract is instituted after 11 years, plaintiff is certainly not entitled for decree for specific performance. Both Courts declined to exercise discretion in favour of plaintiff for adequate reasons recorded in orders. Hence, no substantial question of law arises for consideration in this Second Appeal. Consequently, Second Appeal stands dismissed.

12. In view of dismissal of Second Appeal, pending Civil Application stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE