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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 59 OF 2025**

Mohan Bhagirath Aher

.....Appellant

Vs.

Gloria Gaurisukhbirsingh Sherawat

.....Respondent

Mr. Anish M. Khandekar for the appellant

CORAM : GAURI GODSE, J.

DATE : 28th JANUARY 2025

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ORDER:

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1. Heard learned counsel for the appellant. This appeal is preferred by the plaintiff to challenge the concurrent judgments and decrees dismissing the suit for specific performance of an oral agreement.
2. Learned counsel for the appellant submits that the trial Court disbelieved the execution of the oral agreement. However, the first Appellate Court has accepted the execution of the oral agreement as pleaded by the plaintiff. He, however, submits that the specific performance is refused by recording an erroneous finding that the suit

is hit by non-joinder of defendant's daughter as a necessary party. He submits that the specific performance is prayed of an oral agreement with the defendant and thus, the defendant's daughter was not a necessary party. He submits that only on the ground of payment of part consideration transferred in the bank account of defendant's daughter, she cannot be said to be a necessary party for deciding the prayer for specific performance. He, thus, submits that the second appeal would require consideration as the aforesaid grounds raise substantial questions of law.

3. I have perused both the judgments and pleadings of the plaintiff. The suit is filed for specific performance of an oral agreement with respect to two separate lands owned by the defendant. The plaintiff claims to have paid an amount of Rs. 75,000/- in cash to the defendant. The terms and conditions of the oral agreement pleaded in the plaint refers to remaining consideration amount to be paid to defendant's daughter Ms. Bindya. The bank account details of Ms. Bindya forms part of the pleadings. The plaintiff prayed for an alternative relief of refund of the amount and damages along with compensation as per the particulars of claim in paragraph 13 of the plaint. The particulars of the claim refers to amounts based on the

payments allegedly made to Ms. Bindya. In view of these pleadings, the first Appellate Court held that in the absence of Ms. Bindya being necessary party to the suit, the plaintiff's claim of alternate relief cannot be examined. Since the plaintiff's theory of payment of part consideration amount was with reference to the amounts deposited in the bank account of Ms. Bindya, the first Appellate Court held that Ms. Bindya would be a necessary party to the suit.

4. A perusal of the pleadings in the plaint regarding the terms and conditions agreed between the parties clearly refers to the agreement between the parties to deposit balance consideration amount in the bank account of Ms. Bindya. Considering the plaintiff's pleadings regarding the oral terms agreed between the parties, the payments allegedly made to Ms. Bindya and the alternative prayer for refund and damages with reference to the payments made to Ms. Bindya, the findings recorded by the first Appellate Court on Ms. Bindya being necessary party cannot be faulted.

5. The first Appellate Court refused to grant the prayer for specific performance on the ground that the plaintiff failed to prove any kind of payment to the defendant. Nothing is shown on record to indicate that

any payment was made to the defendant. In the absence of any evidence regarding payment of any kind to the defendant pursuant to the oral agreement pleaded by the plaintiff, the refusal by both the Courts in granting specific performance cannot be faulted. There is no sufficient evidence of any concluded contract between the parties. The payment of earnest amount is not proved. There is nothing on record to indicate readiness and willingness on the part of the plaintiff to perform the contract as per the terms and conditions of the oral agreement pleaded in the plaint. Hence, the plaintiff would not be entitled to seek any specific performance. I do not see any illegality or perversity in the reasons recorded by both the Courts in refusing to grant specific performance.

6. The reasons recorded by the first Appellate Court for accepting the oral agreement between the parties cannot be the sole ground to grant any specific performance.

7. The second appeal does not raise any question of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]