



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.376 OF 2017

APPELLANT : **Sudha Wd/o Ashok Wasnik,**
Aged 52 years, occ- Household, R/o-Plot
No.653 and 654, Baba Deep Nagar,
Behind Gurudwara, Post- Uppalwadi,
Nagpur.

..VERSUS..

RESPONDENT : **Kalpana Wd/o Janardhan Wasnik,**
Aged – 56 tears, Occ- Household, R/o
Vaishali Nagar, EWS Qtr. No.73, Behind
Sagar Bear Bar, Nagpur.

Mr M. V. Rai, Advocate for Appellant.
Mr S. R. Narnaware, Advocate for Respondent.

CORAM : **M. W. CHANDWANI, J.**

DATED : **18th MARCH, 2025.**

ORAL JUDGMENT

1. Heard Mr. M. V. Rai, learned counsel for the appellant
and Mr. S. R. Narnaware, learned counsel for the respondent.
With the consent of the learned counsels for both the sides, the
matter is taken up for final hearing.

2. The appellant has challenged the judgment and decree dated 03.05.2014 passed in Regular Civil Suit No.1731 of 2012 (Old 149 of 2009) by the 19th Joint Civil Judge Junior Division, Nagpur, whereby the suit of the respondent/original plaintiff for declaration, injunction and possession has been decreed and the same has been confirmed by the District Judge-11, Nagpur in Regular Civil Appeal No.257 of 2014.

3. The appellant/original defendant is the real sister of the respondent/original plaintiff who filed a suit for possession of the suit property against the appellant. The suit property was originally owned by the deceased husband of the respondent named Janardhan who alleged that the appellant was homeless as her husband died. Therefore, Janardhan and the present respondent claimed to have taken care of her and provided the suit property for her to reside. The appellant purchased a plot at Sahib Baba Deepsingh Nagar and completed all the formalities for construction but she did not construct the house thereon. When the respondent asked for possession over the suit property, the appellant denied the same. Consequently, the

respondent/original plaintiff filed a suit bearing Regular Civil Suit No.1731 of 2012 for declaration, injunction and possession of the suit property. The appellant/original defendant came up with the defence that she had given Rs.2,00,000/- to Janardhan and one Suresh Yadao had also given Rs.1,00,000/- for construction of the suit property. The respondent/original plaintiff denied the claim of the appellant of giving a hand loan of Rs.2,00,000/- to Janardhan and execution of agreement to sell in the form of one receipt in favour of the appellant. The receipt of agreement to sell, duly signed by Janardhan is binding upon the original plaintiff and legal representatives and therefore, she sought dismissal of the suit.

4. The Trial Court after considering the receipt of agreement to sell has opined that deceased Janardhan had agreed to sell the suit property to the appellant. However, the Trial Court rejected the arguments of the appellant that she could be protected under Section 53-A of the Transfer of Property Act, 1882 (hereinafter referred as “the T.P. Act”) on the ground that the appellant had not taken any steps in furtherance of the

contract and had failed to demonstrate that she was ready and willing to perform her part of the contract. The Trial Court decreed the suit. An unsuccessful attempt was made by filing an appeal before the District Judge, Nagpur. Feeling aggrieved with the dismissal of the regular civil appeal, the present appeal came to be filed.

5. This Court, *vide* order dated 12.03.2018, has framed the following substantial questions of law.

“1. Whether the Court below was justified in holding that the appellant was not entitled to protection under Section 53-A of the Transfer of Property Act, despite finding that the contents of the agreement at Exh.42 had been proved ?

2. Whether the Appellate Court has correctly applied the ratio of Full Bench Judgment of this Court in the case of Mahadeo Nathuji Patil Vrs. Surjabai Khushalchand Lakkad and others, reported in 1994 Mh.L.J. 1145 ?”

6. Heard the learned counsel for the appellant as well as the learned counsel for the respondent. Having gone through the judgments impugned and material available on record, it transpires that deceased Janardhan was the owner of the suit property. During his lifetime, he and the present respondent

allowed the appellant to reside in the suit property. It appears from the record that despite the respondent's request to vacate the premises, the appellant failed to do so prompting the respondent to file a suit for possession. However, the appellant has disputed the respondent's ownership over the suit property and claimed that Janardhan had given the suit property to her as collateral for a hand loan of Rs.2,00,000/-. The receipt of agreement to sell has been placed on record at Exh-42. It depicts that there is an admission of a hand loan of Rs.2,00,000/- and that Janardhan had given the suit property to the appellant with a rider that the appellant would bear all expenses related to the sale-deed.

7. The Trial Court as well as the First Appellate Court were of the view that for claiming protection under Section 53-A of the T.P. Act, the transferee has to show that he/she has taken the possession in part performance of the contract; has taken some steps in furtherance of the contract and has performed or is willing to perform his/her part of the contract. The Trial Court as well as the First Appellate Court were of the view that the appellant did not do any act in furtherance of the contract or

showed willingness to perform her part of the contract and therefore, rejected the defence of the appellant and decreed the suit of the respondent.

8. I have gone through the pleadings. Particularly, there is no whisper in the written statement that deceased Janardhan had taken a hand loan of Rs.2,00,000/- from the appellant and had given the suit property against the said hand loan to the appellant. Needless to mention that no sale-deed has been executed till date. So far as the protection under Section 53-A of the T.P. Act is concerned, there is no whisper in the written statement that the appellant has done some act in furtherance of the contract and she is willing to perform her part of the contract. Also, there is no whisper that the appellant made a request to Janardhan or the present respondent for execution of the sale-deed at her expenses. The Full Bench of this Court in the case of *Mahadeo Nathuji Patil Vrs. Surjabai Khushalchand Lakkad and others, 1994 Mh.L.J. 1145*, relied upon by the appellant has held that in order to claim protection under Section 53-A, the transferee has to show some act in furtherance of the contract. Thus, I do not find

any merit in the argument of the appellant that filing of so called suit for specific performance of the contract by the appellant after dismissal of her defence in the earlier suit would constitute an act in furtherance of the contract. It is to be noted here that, after the Trial Court observed that the appellant had not taken any steps in furtherance of the contract, subsequently, the suit for specific performance was filed by the appellant which ultimately failed due to dismissal on the ground of limitation. Be that as it may, in the present case, no substantial question of law arises. Therefore, the appeal is **dismissed**.

(M. W. CHANDWANI, J.)

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