



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

SECOND APPEAL NO.352 OF 2021

APPELLANT : Prakash s/o Wasudeo Chandankhede,
(Ori. Defendant) Aged about 48 years, Occupation –
(On R. A.) Agriculturist, R/o. Parda, Post & Tah.
Samudrapur, District Wardha.

..VERSUS..

RESPONDENT : Santosh s/o Rambhau Warghane,
(Ori. Plaintiff) Aged about 45 years, Occupation –
(On R.A.) Agriculturist, R/o. Buti Bori, Tah. And
District Nagpur.

Mr S. K. Bhoyar, Advocate for Appellant.

Mr A. A. Sambaray, Advocate for Respondent.

CORAM : M. W. CHANDWANI, J.

DATE : 24th FEBRUARY, 2025.

ORAL JUDGMENT

1. Heard.

2. **Admit.**

3. The appeal takes an exception to the judgment and decree dated 01.10.2021 passed in Regular Civil Appeal No.215 of 2017, whereby the District Judge, Hinganghat overturned the decree of dismissal passed in Special Civil Suit No.84 of 2017 by the Civil Judge Senior Division Hinganghat.

4. Since, the appellant, the original defendant was in financial constraints, he entered into an agreement to sell the suit property for Rs.5,50,000/- to the respondent (original plaintiff) *vide* agreement to sell dated 16.12.2010. The respondent paid a substantial amount of Rs.4,50,000/- to the appellant. The balance consideration amount of Rs.1,00,000/- was agreed to be paid at the time of execution of the sale deed. The appellant agreed to complete the formalities of conversion of land into Class-I and to get it measured. According to the respondent, the appellant avoided to do so. Rather, he was intending to sell the suit property to a third person, therefore, the respondent filed the suit. The Trial Court gave the findings of all the points in favour of the respondent except readiness and willingness to perform his part of the contract. The respondent was non-suited by the Trial Court on the ground that he failed to show as to when he approached the appellant to execute the sale deed; and the respondent was silent for the period from 2010 to 2013. The respondent carried the matter in appeal, wherein the First Appellate Court found that the

respondent was ready and willing to perform his part of the contract. Therefore, the First Appellate Court allowed the appeal directing the appellant to perform his part of the contract and execute the sale deed. Feeling aggrieved with the impugned judgment passed by the First Appellate Court, this appeal came to be filed.

5. By order dated 21.02.2022, the following substantial questions of law were framed.

“(1) Whether the decree passed by the 1st Appellate Court of decreeing the suit of Specific Performance of Contract is in consonance with the provisions of Maharashtra Land Revenue Code, 1966, in reference to the suit property being Class-II occupancy ?

(2) Whether the decree passed by the 1st Appellate Court is null and void in view of protection granted to occupancies of Class-II, which require previous sanction from the Collector for transfer, in view of provisions of Section 61 of the Maharashtra Land Revenue Code, 1966 ?”

6. Mr Bhoyar, learned counsel appearing for the appellant submitted that the appellant is holding the suit property as an occupant of Class-II. According to him, Section 61 of the Maharashtra Land Revenue Code, 1966, is applicable

to the present case as the suit land being Occupancy Class-II is not transferable without previous sanction of the Collector which is absent in this case. Therefore, the same cannot be adjudicated upon in a Civil Court. It is further submitted on behalf of the appellant that the hardships faced by the appellant have not been duly considered. Therefore, it is prayed that the decree which was overturned by the First Appellate Court be restored and the respondent's suit be dismissed.

7. Per contra, learned counsel appearing on behalf of the respondent vehemently submitted that the Trial Court has rightly dealt with all the points in favour of the respondent except readiness and willingness of the respondent, therefore, no interference is required. According to him, though the condition mentions that the prior permission of the Collector is required, even then the suit can be decreed with such condition. To buttress his submission, he seeks to rely on the case of *Balu Baburao Zarole and Ors. vs. Shaikh Akbar Shaikh Bhikan and Ors.*, 2001 AIR (Bombay) 364, wherein, this Court has held that before the conveyance is executed in

pursuance of a decree for specific performance, the previous sanction of the Collector under Section 43 would have to be sought and the execution of conveyance can only take place after and subject to grant of sanction by the Collector; if the Collector grants sanction, the terms and conditions laid down therein have to be observed. Learned counsel for respondent submitted that no substantial question of law arises in this matter.

8. Having heard the learned counsels appearing on behalf of the parties and having gone through the impugned judgments of both the Courts below, it transpires that the appellant agreed to sell the suit property to the respondent. There are concurrent findings of both the Courts below that out of Rs.5,50,000/-, Rs.4,50,000/- has already been paid to the appellant towards part consideration. The Trial Court non-suited the respondent on the ground that the respondent was not ready and willing to perform his part of contract. The judgment of the First Appellate Court goes to show that just because the suit was filed after a sufficient gap of time, it cannot

be necessarily inferred that the respondent was not ready and willing to perform his part of contract. The Appellate Court emphasized on the fact that a substantial amount had already been paid to the appellant and only Rs.1,00,000/- remained to be paid by the respondent which he was willing to do despite his financial constraints. The First Appellate Court set aside the decree of dismissal and directed the appellant to perform his part of the contract.

9. Perusal of the impugned agreement goes to show that the appellant agreed to convert the land from Occupancy Class-II to Occupancy Class-I, which he did not do. Therefore, the First Appellate Court directed the appellant to perform his further part of contract, since the agreement contains conversion of land from Occupancy Class-II to Occupancy Class-I. Therefore, the question raised with regard to Occupancy Class-II does not arise at all. Moreover, it has not been demonstrated that the sale of Occupancy Class-II land requires Collector's permission.

10. Considering the issue of hardship, firstly, no substantial question of law was framed in this regard, rather, there was no pleading regarding the alleged hardship. Moreover, the Appellate Court has adequately addressed this point. Thus, no substantial question of law arises in this appeal. Hence, the appeal is **dismissed**.

11. Learned counsel for the appellant submits that the interim order dated 21.02.2022 may be extended for further period of eight weeks.

12. Considering his request, the interim order dated 21.02.2022 shall remain in force for further period of eight weeks.

(M. W. CHANDWANI, J.)

Tambe