



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

SECOND APPEAL NO.02 OF 2024

Vijay Sundarnarayan Verma Vs. Santosh Mukundrao Bhargav

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Alok Daga, Advocate for the Appellant.
Mr. B.B. Damodar, Advocate for the Respondent.

CORAM: ROHIT W. JOSHI, J.

DATED : 20th JANUARY, 2026

1. The appellant is the original plaintiff, who had filed the suit for specific performance of contract against the present respondent. The agreement between the parties is dated 16.10.2010. The parties had agreed to execute the Sale Deed on or before 30.01.2011. The sale consideration was determined @Rs.380/- per square feet.
2. Perusal of the Agreement indicates that, as per record the area of the suit property was 247 square meters and upon measurement of the same, the parties found that only 216 square meters of land was available at the spot.
3. The plaintiff had issued a notice dated 11.08.2011 calling upon the defendant to measure the suit property in order to determine the exact sale consideration payable by him in terms of the Agreement. The said notice is not replied, as a consequence of which the plaintiff filed suit for specific performance of contract on 03.04.2012. The suit came to be registered as Special Civil Suit No.79/2012.
4. The suit came to be decided vide judgment and decree dated 06.11.2015 by the learned Extra Joint Civil Judge

Senior Division, Amravati. On appreciation of the evidence the learned Trial Court had found that the area of the suit property is mentioned in the agreement as 216 square meters, after the measurement of the same. The learned Trial Court has also recorded that the plaintiff could not bring evidence on record to establish his financial capability on the readiness to perform his part of the contract. Accordingly, the learned Trial Court refused the decree for specific performance of contract and granted decree for refund of part-sale consideration of Rs.2,21,000/- paid by the plaintiff to the defendant.

5. Aggrieved by the said decree, the plaintiff preferred First Appeal, which came to be registered as Regular Civil Appeal No.135/2016. The appeal was dismissed by the Learned District Judge-4, Amravati vide judgment and decree dated 16.07.2022.

6. In the result, both the Courts have denied the relief of specific performance of contract and have instead granted a decree for refund of sale consideration.

7. Mr. Alok Daga, learned advocate for the appellant vehemently contends that although the area of the suit property as per the record, as also the area that was available at the spot is mentioned, the said area is mentioned tentatively and for determination of the exact sale consideration the measurement of the suit was necessary. He draws attention to the second page of the agreement to contend that the defendant/vendor had agreed to get the measurement of the land done before the execution of the Sale deed.

8. It is true that the sale consideration is fixed on per square foot basis. However, it is also pertinent to note that the area of the suit property as per the record and also as per the

actual area available at the spot is mentioned in the agreement. The agreement specifically recites that the area available at the spot is mentioned therein upon the measurement of the suit property.

9. Both the Learned Courts have therefore, on interpretation of the agreement held that the suit property was already measured before entering into the agreement and there was no need for a fresh measurement. Apart from this, both the Learned Courts found that the plaintiff did not bring any cogent evidence on record to show his readiness i.e. financial capability to discharge his financial commitment under the Agreement. The view taken by the Learned Courts is a possible view based on appreciation of the evidence.

10. In that view of the matter, no substantial question of law arises for consideration in the Second Appeal. Second appeal is, therefore, **dismissed** with no order as to costs.

(ROHIT W. JOSHI J.)

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