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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO(S).2320/2009  
CHHANABHAI NANUBHAI PATEL

APPELLANT(S)

VERSUS

MANUBHAI AKKHUBHAI PATEL (DEAD) THR. LRS. & ORS.

RESPONDENT(S)

O R D E R

We have heard learned counsel for the parties.

The appellant/plaintiff filed a suit for specific performance of agreements dated 20.01.1982 and 03.02.1982 in respect of two plots for a consideration of Rs. 21,151/- and Rs. 35,177/- respectively. The suit was filed before the Civil Judge (S.D.), District Valsad, Gujarat. The respondent/defendant herein contested the said suit on the ground that no readiness and willingness was shown by the appellant/plaintiff for the execution of the sale deed. It was also submitted that the respondent is 'Adivasi' and the agreements in question were in contravention of the provisions of Section 73AA of the Bombay Land Revenue Code, apart from other revenue laws. The jurisdiction of the Civil Court was also challenged. These contentions found favour of the Trial Court resulting into rejection of the relief of specific performance and granting the alternate relief of refund of the amount paid.

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Challenging the judgment of the Trial Court, the appellant filed first appeal in the High Court of Gujarat. The High Court vide impugned judgment dismissed the said appeal. It is not in dispute that the respondent is an 'Adivasi'. Therefore, he is granted protection by the aforesaid provisions of the Bombay Land Revenue Code and also the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Once the agreements are found to be in contravention of the statutory provisions, that could not have any enforcement thereof and the course of action adopted by the courts below seems proper. It is argued by the learned counsel for the appellant that the High Court has wrongly held that the agreements were in contravention of the provisions of Tenancy Act or Holdings Act. We need not deal with this aspect as it was conceded that these were in violation of Bombay Land Revenue Code. On that basis alone we find that the High Court's conclusion would be correct that relief of specific performance is not warranted. Argument before the High Court was that a conditional decree for specific performance could be passed on the condition that the decree would be enforced after obtaining the requisite permission. This contention is dealt with by observing that though the Civil Court could have passed conditional decree, however, in the instant case, it exercised its discretion in not passing the decree for specific performance but passed alternative decree for refund of the consideration money with interest, when it found that the agreements were in

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contravention of the statutory provisions contained in the Bombay Land Revenue Code. We, therefore, do not find any justifiable ground to interfere with the aforesaid discretion exercised by the two courts below. The appeal is dismissed.

.....J.  
[A.K. SIKRI]

.....J.  
[N.V. RAMANA]

NEW DELHI;  
SEPTEMBER 15, 2016.

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RECORD OF PROCEEDINGS

Civil Appeal No(s). 2320/2009

CHHANABHAI NANUBHAI PATEL

Appellant(s)

VERSUS

MANUBHAI AKHUBHAI PATEL (DEAD) THR. LRS. & ORS.

Respondent(s)

(with interim relief and office report)

Date : 15/09/2016 This appeal was called on for hearing today.

CORAM : HON&#39;BLE MR. JUSTICE A.K. SIKRI

HON&#39;BLE MR. JUSTICE N.V. RAMANA

For Appellant(s) Mr. Shamik Sanjanwala, Adv.

Ms. Hemantika Wahi, Adv.

For Respondent(s) Mr. Raghavendra S. Sri. Adv.

Mr. Abhijat P. Medh, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The civil appeal is dismissed in terms of the signed order.

Pending application, if any, shall be disposed of accordingly.

(Ashwani Thakur) (Tapan Kr. Chakraborty )

COURT MASTER

COURT MASTER

(Signed order is placed on the file).