



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 152 OF 1994
WITH
CIVIL APPLICATION NO. 6168 OF 1998
IN SA/152/1994**

1. Sonu s/o Laxman Mahajan,
age 57 years, occupation
agriculture, residing at
Raver, Taluka Raver,
District Jalgaon. (deceased died through LRs.)
- 1-A) Rahul prakash mahajan
Age: 35 years, Occu. Service
- 1-B) Atul prakash mahajan
Age: 25 years, Occu-Agri.
- 1-C) Rajshree Prakash Mahajan
Age. 27 years Occ. Household
- 1-D) Jayashree Prakash Mahajan
Age. 30 years Occ. Household
R/o Shikrapur Tq. Shirur Dist. Pune.
- 1-E) Seema Prakash Mahajan.
Age. 28 years Occ. Household.
R/o Kurudwadi, Tq. & Dist. Solapur.
- 1-F) Vastalabai Prakash Mahajan
Age 60 years. Occ. Household
- 1-G) Sumanbai Pundlik Mahajan
Age 65 years Occ. House hold
- 1-H) Shakuntalabai Pundlik Haveliwale
Age 70 years Occ. Household.
- 1-I) Kusumbai Narayan Mali
Age. 68 years Occ. Household.

1-J) Mangalabai Namdev Mahajan
Age 62 years Occ. Household.

1-k) Nandabai Muralidhar Rajankar
Age 58 years. Occ. Household

1-L) Sushilabai Sonu Mahajan
Age. 80 years. Occ. Household.
All R/O Shivaji Chowk, Raver Dist. Jalgaon.

2. Muktabai w/o Laxman Mahajan,
age 77 years, Occupation-Household,
residing as above(Appellants)

V_E_R_S_U_S

Amrutlal s/o Devlal Lohar,
age 47 years, Occupation agriculture,
residing at Raver, Taluka Raver,
District Jalgaon.(deceased died through LRs.)

1) Mansukh Amrutlal Lohar
Age: 40 years, Occu. Agri,

2) Alpesh Amrutlal Lohar
Age: 35 years, Occu.Agri,
Both R/O Shivaji Chowk Raver
Dist. Jalgaon.

3) Maya Laxmikant Lohar
Age: 40 years, Occu.household,
R/o- pathale galli, Parola Dist. Jalgaon.

4) Chaya Deepak Chavan
Age: 45 years, Occu.household
Plot no, 3 Dhandai nagar,
Devpur Dhule.(Respondents)

Mr. L. V. Sangit, Advocate for appellants
Mr. V. R. Patil, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 31st January, 2025

JUDGMENT :-

1. Learned counsel Mr. Vinesh C. Solshe seeks discharge on the ground that the respondents have engaged learned counsel Mr. V. R. Patil. He stands discharged.
2. Original defendants takes exception to the judgment and decree passed by the Trial Court in Regular Civil Suit No. 93/1977 granting decree of specific performance in favour of the plaintiff and confirmation thereof in Regular Civil Appeal No. 186/1986 by First Appellate Court.
3. Parties are referred to as "plaintiff and defendants" for the sake of convenience.
4. There is no dispute about the fact that plaintiff filed suit bearing Regular Civil Suit No. 93/1977 for seeking specific performance of the contract on the basis of agreement to sale executed by defendants dated 20.10.1973 for sale of suit property. There is no dispute about the fact that defendants are the owners and are in possession of the suit property. It is a case of the plaintiff that at the time of execution of agreement dated 20.10.1973, defendants have accepted sum of

Rs. 3,500/- and subsequent thereto on 01.12.1973 further amount of Rs. 8,000/- was accepted. Parties were to execute sale deed on or before 23.05.1977. It was further agreed between the parties that the necessary permissions for the sale to be obtained by defendants but at the cost of plaintiff. Since, defendants did not obtain any permission, and there was no execution of sale deed, plaintiff filed suit for specific performance of contract.

5. Defendants filed written statement denying the contentions in the plaint. It is specifically claimed that the transaction in question is money lending transaction. Defendants admitted signature of defendant No.2 and thumb impression of defendant No.1 on agreement to sale (Exhibit 32). It is further claimed that the said document came to be executed by them without knowing the contents of the document. It is also claimed that the plaintiff has mis-represented them about the contents and as such said document is not binding upon him.

6. Before the learned Trial Court, evidence was led. Plaintiff examined himself. Whereas defendant no. 2 examined himself and also led evidence of two other witnesses who were the ad-joining owners of the suit property. Learned Trial Court decreed the suit and directed execution of the sale deed by defendants in favour of the plaintiff subject to permission granted by the Competent Authority in the said sale under

the Bombay Agricultural and Tenancy Act, 1948 (for short "the Act"). This judgment was taken exception before the First Appellate Court unsuccessfully. Hence, this appeal.

7. Learned counsel for the appellant/original defendants submits that this Court by order dated 29.07.1994 has admitted the appeal on the grounds which are reproduced herein below :-

II) Whether the Courts below should have granted performance in favour of the plaintiff when the very document itself is not at all proved by the plaintiffs conclusively as neither the scribe nor other witnesses have deposed in support of the plaintiff.

VII) Whether the specific performance of the tenanted land under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 can be granted in favour of the plaintiff ?

VIII) Whether a decree of performance can be granted, when there is a clear-cut bar under the provisions of the Bombay Fragmentation and Consolidation Act, since the suit land is a fragment ?

8. It is his submission that when the defendants have specifically come out with the case that the contents of the said document were not known to the defendants at the time of an execution of document. The burden is on the plaintiff to prove not only execution of document but also contents of the document to support said submission. He has placed reliance on the judgment of **Kamlabai W/O Ishwar**

Pujari and others Versus ShantiraI w/o Lalitmohan Rai and others 1983 Mh.L.J. 221.

It is further argued that the defendants have led evidence of two ad-joining owners who have specifically stated about plaintiff in possession of the suit property for the year 1973-1974, 1974-1975 and 1975-1976 and having cultivated the said land. It is his submission that in the cross examination nothing is elicited to discard their testimony. He has also drew attention of the Court to the provisions of the Act in order to submit that the purpose and intention of the legislature is clear under Section 32 is to transfer the ownership of the land to the tenant and to protect his interest who personally cultivated the land. It is his contention that no decree could have been passed by the Trial Court owing to the provisions of the said Act.

9. The scope of Section 100 of the Code of Civil Procedure is limited to the extent that second appeal can be entertained only if there involves substantial question of law. It would not be permitted for this Court to re-appreciate the evidence as if First Appellate Court and to record any finding contrary to the findings recorded by the Court below. Only in case such findings are perverse, it may be open to cause interference therein.

10. As far as instant case is concerned, plaintiff's case is of execution of agreement to sale dated 20.10.1973 by defendants.

Defendants do not dispute the execution of the document. It is however claimed that the document was executed but without knowing the contents of the same. It is however necessary to take note of the important fact that though defendants have filed written statement, no counter claim was filed to seek declaration of the said document to be invalid and not binding upon the them. Apart from this, though in the written statement it is sought to be claimed that without knowing contents of document it is executed, however, at the first available opportunity in the defendants reply (Exhibit 30) to notice exhibit 24 issued by the plaintiff before filing of the suit. No suit plea is raised. Such plea must have been raised as first available and, it was absolutely necessary for the defendants at that stage itself to state that though document is executed without knowing contents therein. On the contrary notice reply indicates that contents of the document were very much within the knowledge of the defendants. It is specifically stated in the reply that :-

‘नोटीसीचे उत्तर

श्री अमृतलाल देवालाल लोहार मु.पो.रावेर ता. रावेर, जि. जळगांव यांसी १) श्रीमती मुक्ताबाई भ्र. लक्ष्मण महाजन २) सोनु लक्ष्मण महाजन दोघांची वस्ती रावेर ता. रावेर जि. जळगाव यांचे तर्फे श्री एम.जी. भोळे अॅडव्होकेट, जळगांव यांचेकडून आमचे अशिलांनी दिलेल्या माहितीवरून नोटीसीचे उत्तर देण्यात येते की ;

तुमची श्री व्ही. आर. वाणी अॅडव्होकेट,

जळगांव यांचेकडून ता. ५/५/७७ रोजी लिहीलेली नोटीस आमचे अशिलास मिळाली. त्या नोटीसीतील मजकूर खरा नाही व तो आमच्या अशिलांना कबूल नाही. तुमचे नोटीसीत म्हटलेप्रमाणे आमचे अशिलाचे मालकीचे व कबजातील मौजे रावेर येथील शेत सर्वे नं. २७/१/१+३/१ क्षेत्र एकर १-२१ गुंठे आकार रूपये २-६२ पैसे हे विकण्याचा सौदा तुमचे अशिलास रूपये ८०००/- वर ता. २०-१०-१९७३ रोजी आमचे अशिलांनी केला हे म्हणणे खरे नाही. सदर शेत मिळकत विकण्याबाबत कोणत्याही प्रकारचे बोलणे झालेले नाही व विकण्याचा हेतुही आमचे अशिलाचा नव्हता व नाही व तुम्हास ही सदरचे शेत विकत घ्यावयाचे नव्हते. खरी परिस्थिती अशी आहे की; आमचे अशिलास मुलीच्या लग्नाकरिता पैश्यांची जरूरी होती म्हणून तुम्ही घरोब्याचे म्हणून तुमचेकडून रोख रक्कम रूपये ३५००/- आमचे अशिलांनी ता. २०-१०-१९७३ रोजी घेतले ही गोष्ट खरी आहे, परंतु तुम्ही सदर रकमेच्या “धर” साठी म्हणून शेताची सौदेचिठ्ठी नॉमिनल करून घ्या असा आग्रह धरल्यावरून सदर शेत मिळकत रूपये १५०००/- च्या किंमतीच्या वर असतांना तुम्ही लिहून आणलेल्या सौदेचिठ्ठी वर आमचे अशिलांनी भीडेने सही केली व त्याचा तुम्ही फसवेगीरीने गैरफायदा घेणेये हेतुने सदरची खोटी नोटीस देउन शेत खरेदी करून घ्या असे लिहीत आहांत तसेच तुम्ही म्हणतां त्याप्रमाणे जादा बयाणा म्हणून रु. १८००/- पुन्हा तारीख १-१२-७३ रोजी तुम्ही दिले हे तुमचे म्हणणे खरे नाही. वरील परिस्थितीत तुमचे सदरचे अन्यायकारक, फसवेगीरीने दिलेल्या खोटया नोटीसींवरून कांही दावा धोका केल्यास त्याचे होणा-या सर्व खर्च परिणामास तुम्ही जबाबदार राहाला. तारीख २८-५-७७”

Thus, the knowledge of the contents of document is not denied so also execution.

11. In this regard, defendant No.2 is cross-examined who admits to have given instructions to his lawyer while giving reply to the notice by the plaintiff. Moreover, there is no explanation from him that he never

gave any instructions with regard to the knowledge of the contents of the document. In such circumstances there was no burden on the plaintiff to prove the contents of the document. This Court, therefore, finds no substantial question of law in ground No. II of the appeal memo, as reproduced herein above.

12. It is the contention of the defendants about the intention of the legislature in enacting relevant provisions of the Tenancy Act is to protect the interest of the tenant. There cannot be any dispute with regard to the said proposition sought to be canvased by the learned counsel for the defendants. However, at the same time, relevant provisions of the said act clearly indicate that it is the Collector who is the Competent Authority to decide as to whether sanction to be granted for sale of the property covered by the provisions of the Act. Civil Court cannot assume such jurisdiction even indirectly. Here, in this case, learned Trial Court has rightly considered the said provisions and, therefore, decree has passed, operative part reproduced herein below :-

ORDER

1) The defendants are hereby directed to make necessary application to the Collector within one month of this order for getting the necessary sanction for execution of registered sale deed.

2) In case, the defendants fail, the plaintiff will be at liberty to make the necessary application to the Collector and the defendants should bear the expenses for getting the said permission.

3) *In case the Collector gives necessary permission for effected sale, the defendants are hereby directed to execute the registered sale deed in respect of the suit property in favour of the plaintiff within one month of the receipt of the said permission and the plaintiff should bear the expenses of registration and stamps for execution of said sale deed.*

4) *The plaintiff should deposit the amount of Rs. 2,700/- in Court as remaining consideration within one month of getting necessary permission from Collector.*

5) *The defendants are hereby directed to delivery the possession of suit filed to plaintiff after execution of sale deed.*

6) *In case, the defendants fail to execute registered sale as per above directions, the plaintiff will be at liberty to get the executed register sale deed through Court.*

7) *In case the necessary permission is refused by the Collector, the defendants pay the amount of Rs. 7587.50 and interest at the rate of Rs. 12% per annum on the amount of Rs. 5,300/- from the date of suit till realization to plaintiff.*

8) *The defendants should bear their own costs and the costs of the plaintiff.*

9) *The decree be drawn up accordingly.*

13. The afore-stated operative part, therefore, makes it clear that defendants are directed to make necessary application to the Collector and if they fail to do so liberty is granted to the plaintiff to make such application. The execution of sale deed would be only subject to the Collector giving necessary permission for the sale. If no

permission is granted by the Collector then direction is issued for refund of amount of Rs. 7587.50/- along with the interest at the rate of 12 percent per annum on the amount of Rs. 5300/- till realization. All these clauses of the operative part of the order pertinently make it clear that the Trial Court was conscious of the provisions of the Act and accordingly the decree is passed. No fault can be found, therefore, with the decree passed by the Trial Court for granting specific performance subject to the permission granted by the Collector.

14. It is also sought to be argued on behalf of the defendants that the sale transaction is barred by the provisions of Prohibition of Fragmentation and Consolidation Act. Though, such submission is made before this Court, no pleadings are found in that regard in the written statement. This plea sought to be raised is not pure question of law but a mixed question of fact and law as such, the same cannot be allowed to be raised in second appeal for first time. To permit such plea now will lead to denying opportunity to meet the same to plaintiff during trial.

15. Trial Court and the First Appellate Court have rightly taken into consideration pleadings and evidence on record and for want of perversity therein no interference is called in this appeal. Appeal is dismissed. In any case, no substantial question of law is involved in this appeal. Consequently, appeal stands dismissed. Pending Civil Application,

if any, stands disposed of.

16. Learned counsel for the appellant/defendants seeks continuation of the interim relief for a period of 3 months.

17. None for the respondent/plaintiff.

18. Though the appellant is entitled to challenge order passed by this Court before the Hon'ble Supreme Court, the time of three months sought is not reasonable. Hence, interim order to continue for a period of 6 weeks from today.

(R. M. JOSHI, J.)

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