



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
910 CIVIL APPLICATION NO. 6891 OF 2026
IN SA/401/2026

Shaikh Salim Shaikh Haleem
VERSUS
Suman Ramprasad Dabhade And Others

WITH
SECOND APPEAL NO. 401 OF 2026

Shaikh Salim Shaikh Haleem
VERSUS
Suman Ramprasad Dabhade And Others

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Mr. Manish Tripathi for the Appellant.
Mr. Suyashkumar S. Jangada for Respondent No.1.
Mr. S. S. Dande, AGP for State.

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CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 17 JULY 2026

P. C.:

1. Herd learned counsel for the respective parties.
2. By this Appeal, the Appellant-original Defendant No.1 assails the judgment and decree passed by the District Judge-1, Parbhani in Regular Civil Appeal No.52 of 2021 dated 21st April 2026 arising out of judgment and decree passed by Civil Judge Senior Division, Parbhani in Regular Civil Suit No.95/2015 dated 20th November 2021 thereby directing Defendant No.2/Sub-registrar Jintur to register sale deed at Exh.52 with or without presence of Defendant No.1 and further restraining Defendant No.1

permanently from alienating or creating third party interest in the suit property.

3. The brief facts of the case are such that the suit property was originally owned by Shaikh Usman which was allotted to him as a permanent tenant under Section 38(e) of Hyderabad Tenancy and Agricultural Lands Act, 1950. Permission to sale the said land was given under Section 50B of the said Act and thereby Defendant No.1 purchased the same. While granting permission a condition No.5 was imposed obligating fresh permission at the time of subsequent transfer. Defendant No.1 entered into an oral agreement with the Plaintiff to sale the suit property for consideration of Rs.3,75,000/- out of which amount of Rs.2,50,000/- was paid at the time of agreement and remaining was to be paid at the time of execution of sale deed. The amount was paid in the form of cheques. The Defendant No.1 acknowledged the receipt of token amount on overleaf of each cheque. It was also signed by the witnesses. On 12th April 2010, when Plaintiff, her husband, Defendant No.1 and witnesses approach the office of Defendant No.2/sub-registrar, the Defendant No.2 refused to register the sale deed stating endorsement of Section 36 and 36A in the Rights column of 7/12 extract that prior permission of relevant authority is essential. Immediately thereafter, Defendant No.1 applied for fresh permission and he came to know on 16th December 2013 that no fresh permission was required. The Plaintiff requested the Defendant No.1 to

register the sale deed but he refused to do so. In the meantime, the possession was also handed over to the Plaintiff and she is cultivating the land personally since 12th April 2010. On Plaintiff's repeated request, the Defendant No.1 failed to execute sale deed, therefore Plaintiff issued a notice calling upon Defendant No.1 to attend the office of sub-registrar on 23rd February 2015, in reply to which Defendant No.1 refused to execute sale deed. Therefore, by filing RCS No.95/2015 the Plaintiff prayed for mandatory injunction directing the Defendant to register the sale deed and further restraining the Defendant No.1 perpetually from alienating the property or creating third party interests therein. The said Suit was dismissed whereas the First Appellate Court allowed the Appeal thereby decreeing the Suit. Hence, the original Defendants have preferred the Second Appeal.

4. Mr. Tripathi, learned counsel for the Appellant submits that Suit on the basis of oral agreement was not maintainable. He further submits that even such oral agreement was not in existence and inviting my attention to paragraph 11, 12, 14, 16 and 17 he contended that the Plaintiff has failed to prove such oral agreement before the Trial Court. Readiness and willingness on her part to execute sale deed was not proved. Therefore, learned Trial Court has rightly dismissed the Suit, which was erroneously decreed by the First Appellate Court. Praying to admit the Appeal, he proposed following substantial questions of law:-

- 1) Whether, the plaintiff proved the oral agreement between the plaintiff and defendant No.1 in respect of Sy.No. 20/2 totally adm. 8H-63R to the extent of 2H-40R land for consideration of Rs. 3,75,000/- and further proved that, she has paid earnest money of Rs.2,50,000/- on 12.01.2010 and Rs.1,25,000/- toward full and final consideration on the day of so-called execution of sale-deed dated 12.04.2010?
- 2) Whether, the suit filed by the plaintiff seeking mandatory injunction, directing the defendant No.2-Registrar to register the sale-deed in respect of land Sy. No.20/2 adm. 8H-63R to the extent of 2H-40R land without seeking decree of specific performance of contract i.e. oral agreement as pleaded by her in the suit?
- 3) Whether, the defendant/ appellant has proved agreement to sale between Gangadhar i.e. father of plaintiff and the defendant No.1 dated 24.11.2009 by examining the advocate Notary, Shri T.G. Holambe and further the appellant/defendant No.1 has proved that, there is no independent transaction between the plaintiff and defendant No.1 in respect of suit property apart from agreement dated 14.11.2009?
- 4) Whether, once the appellant/ defendant No.1 has denied the signature on the cheques as well as so-called sale-deed then burden to prove the signature on the cheques and sale-deed lies on the plaintiff and not on defendant No.1, therefore merely because the defendant No.1/ appellant has not filed application for examination of said signature through the handwriting expert, can both the Courts record the finding that, the defendant No.1 has accepted the amount of Rs.2,50,000/- and signed the so-called sale-deed?
- 5) Whether, the lower Appellate Court has complied with the directions

issued by the Hon'ble Apex Court in the case of Santosh Hazari vs. Purushottam Tiwari, reported in AIR 2001 SC 965 and particularly, framed the issues arising in the matter.

6) Whether, the first Appellate Court can consider the contents of unregistered sale-deed Exh-52 (which is disputed by defendant No.1) which are completely contrary to the pleadings and oral evidence of plaintiff in respect of transaction in question by virtue of Section 91 and 92 of the Indian Evidence Act, 1872?”

5. Per contra, Mr. Jangada learned counsel for the original Plaintiff-Respondent No.1 supports the order passed by the learned Appellate Court by inviting my attention to para 50 and 51 which reads as under:-

“Point no.3:

50) There was no question of readiness or willingness, as the plaintiff had performed her part of contract and the defendant no.1 had performed his part of contract by execution of the sale deed. There was nothing left for defendant no.1 to perform except completing the formalities in the Registration office. But it appears that, defendant no.2 under wrong notions of law, refused to register the document. Therefore the question of only registration remained. As such this issue is determined as redundant.

Point no.4:

51) In such circumstances, the relief was mainly against the defendant no.2 and there was no reason for defendant no.2 to refuse the registration once the clarification was issued by the office of Collector vide Exhibit 53. Therefore, refusal to registration was found to be illegal. Hence, this point is determined in the affirmative.”

6. I have considered rival submissions of the learned counsel and

perused the record. It is not in dispute that the two cheques were signed by Defendant No.1 and witnesses as a token of receipt of earnest amount as the Trial Court has recorded relevant finding in paragraph 16. It is also proved that the sale deed was returned by Defendant No.2/sub-registrar due to an endorsement in the revenue record regarding Section 36 and 36A requiring requisite permission to alienate the property. Though the Defendant No.1 denied receipt of money, said aspect is sufficiently proved by way of cheques and his signature over the cheques and the sale deed. So far as the issue of readiness and willingness is concerned, the learned First Appellate Court has held that the Plaintiff and Defendant No.1 had performed their part of the contract and nothing was left except the completion of formalities but due to wrong notion of law the sub-registrar refused to register the sale deed. As such there was no relief claimed against Defendant No.1. The relief sought was mainly against sub-registrar. The finding of learned Appellate Court that intention to execute sale deed has not been challenged by the Appellant herein, upon which learned counsel for the Appellant submits that the findings can be challenged by way of submission also and the written notes in that regard are also on record whereby the said finding is assailed.

7. The aspects that emerge for consideration are that whether the agreement has been entered into, whether the earnest amount has been accepted, whether the Plaintiff has performed her part of the contract and whether the only hurdle against registration was the endorsement in the

Rights column of the revenue record. All these aspects are answered in favour of Plaintiff. Thus, I am of the opinion that the learned First Appellate Court has rightly held that the Suit ought to have been decreed.

8. Therefore, considering the above I find that the Appellant has not made out any case to interfere with the order passed by the First Appellate Court, much less no substantial questions are involved in the present Appeal.

9. Hence, the Second Appeal is dismissed. No order as to costs.

10. Pending Civil Applications, if any, stand disposed of.

11. At this stage, learned counsel for the Appellant seeks continuation of interim relief passed by the Appellate Court. Considering the dismissal of Second Appeal, I am not inclined to continue the interim relief.

[SIDDHESHWAR S. THOMBRE, J.]