

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**APPELLATE SIDE CIVIL JURISDICTION**

SECOND APPEAL NO. 87 OF 2014  
 ALONGWITH  
 CIVIL APPLICATION NO. 1165 OF 2014

|                                   |     |                |
|-----------------------------------|-----|----------------|
| Sau. Sitabai Nivrutti Sonawane    | ... |                |
| V/S                               |     | ....Appellant  |
| Shri. Sikhadeo Kashinath Yelwande |     | ....Respondent |

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Mr.P.B.Shah with Mr.K.P.Shah for the Appellant.  
 Mr.U.P.Warunjikar for the Respondent.

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**CORAM : A.A. SAYED J.**  
**DATED : 22 NOVEMBER 2017**

**P.C.:**

This Second Appeal filed under section 100 of the Civil Procedure Code, 1908 impugns the judgment and order dated 23-09-2013 passed by the District Court, Pune, dismissing the Appeal of the Appellant/original Plaintiff and thereby upholding the judgment and order passed by the Civil Judge, Junior Division, Khed, District: Pune, dated 26-06-2008. By the judgment and order dated 26-06-2008, the Civil Judge, Junior Division had partly decreed the suit and denied the relief of specific performance and further directed the Respondent/original Defendant to pay Rs.15,000/- to the Appellant/original Plaintiff alongwith interest at the rate of 12% p.a. from 25-05-1995 till the date of judgment and order i.e. 26-06-2008 and at the rate of 6% p.a. from 26-06-2008 till the realization of the amount.

2. Thus, there are concurrent findings of both the Courts below. Though the execution of the Agreement for Sale between the parties is admitted, the Trial Court in its discretion did not grant the relief of specific performance. The Trial Court observed that the Plaintiff in her cross-examination admitted that she never cultivated the suit land and that the Defendant himself had cultivated the suit land and also paid the property taxes and concluded that this case was contrary to her own case in her Plaint that she was in possession of the suit property. The lower Appellate Court after reappreciating the evidence on record concurred with the findings of the Trial Court and concluded that from the evidence on record and the suggestions given by the Plaintiff, the case of the Defendant that the transaction was a loan transaction and not of Agreement for Sale gets corroborated. The Appellate Court dismissed the Appeal. Both the Courts below have, thus, exercised their discretion in refusing to grant the relief of specific performance. The discretion exercised by the Courts below are within the framework of law and cannot be said to be unsound.

3. In my view, no substantial question of law arises for consideration in the Second Appeal. Hence, the Second Appeal is dismissed. There shall be no order as to costs. The Respondent is directed to pay the amount of

Rs.15,000/- alongwith interest as recorded in paragraph 17(3) of the impugned judgment and order of the Trial Court within a period of four weeks from today.

4. In view of dismissal of the Second Appeal, Civil Application does not survive and to stand disposed of.

**(A.A.SAYED, J.)**