

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO. 826 OF 2016

Smt.Sunetra Bhalchandra Patil & Ors.	...Plaintiffs
Vs.	
Shamlal Prahladrai Vaid & Anr.	...Defendants

Mr.A.P. Rege for Plaintiffs.

CORAM : S.C. GUPTE, J.

DATE : 1 FEBRUARY 2018

P.C. :

This suit is for specific performance of an agreement for sale termed as “conveyance” between original Plaintiff and the Defendants. Despite service of writ of summons, neither is any written statement filed by the Defendants nor any appearance entered. The suit was directed by the Prothonotary to be transferred to the list of “Undefended Suits”. That is how the suit has come before me for exparte decree today.

2 The Plaintiff has produced original documents consisting of the original agreement dated 2 June 1980 captioned “Conveyance Deed” between the original Plaintiff and the Defendants, irrevocable Power of Attorney of the same date executed by the Defendants in favour of the Plaintiff, an affidavit executed by the Plaintiff as well as correspondence between the parties as also between the original Plaintiff and the Tahsildar for making entries in the revenue records. Photographs showing activities conducted on the suit plot by the original Plaintiff have also been placed on record. The Plaintiff has filed affidavit of evidence of Plaintiff No.1B, who is

brought on record as a legal heir of the original deceased Plaintiff along with two others. Plaintiff No.1B is the son of the original Plaintiff. He has produced the original affidavit meant to be used as an examination in chief affirmed by the original Plaintiff on 5 October 2017 and also verified the contents of that document as true and correct. The witness has deposed to the Indenture of Agreement (Defendants executed on 2 June 1980) as also payment of the consideration under the agreement. The witness has also deposed to the execution of the Irrevocable Power of Attorney by the Defendants in favour of the original Plaintiff. The witness has deposed to the delivery of possession of the suit property by the Defendants to the original Plaintiff and the exclusive uninterrupted and continuous possession of the same by the Plaintiff since then. The witness has also deposed to the religious and social activities relied upon by the Plaintiff on the suit property as also correspondence concerning the suit property with the Tahsildar as also with the Defendants. The documents are admitted on record and marked as **Exhibits P-1 to P-10**.

3 On the basis of the oral and documentary evidence placed before court by the Plaintiff, which is not controverted by the Defendants, the Plaintiffs have made out their case that there is a valid and enforceable agreement for sale executed in favour of their predecessor by the Defendants and the agreement is subsisting as of date. The Plaintiffs have also made out their case of having been ready and willing to perform their part of the suit agreement at all material times and, in fact, have shown their due performance of the suit agreement for sale. The Defendants are shown to have failed to perform their contract and as a result, the Plaintiffs are entitled to a decree of specific performance.

4 Accordingly, the suit is decreed in terms of prayer clauses (a) and (b) of the plaint. Refund of Court Fees in accordance with the applicable Rules.

(S.C. GUPTE, J.)