

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**SECOND APPEAL NO. 93 OF 2019**

Anandrao S/o Mahadeoji Padole,  
Aged about 50 years, Occ. Agriculturist,  
R/o Near Dr. Jogewar Hospital, Rajiv  
Gandhi Chowk, Bhandara, Tahsil and  
Dist. Bhandara.

.... **APPELLANT.**

(Ori. R.A.)

**// VERSUS //**

1. Mrs. Shalu S/o Pralhad Meshram,  
Aged 49 yrs, Occ. Service,  
R/o Plot No.42, Vidya Nagar, Bhandara,  
Tahsil and District Bhandara.
2. Smt. Trinayana Siddharth Borkar,  
Aged 31 yrs, Occ. Agriculturist,
3. Mr. Sahayog S/o Siddharth Borkar,  
Aged about 11 yrs, through his natural guardian  
mother respondent No.2,  
Both Respondent Nos.2 and 3, R/o. Kaneri  
(Dagadi), Tahsil : Lakhani, District: Bhandara.

.... **RESPONDENTS.**

(Ori. R.A.)

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Shri.P.V.Ghare, Advocate for Appellants.

Shri A.M.Quazi, Advocate for the Respondent No.1.

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**CORAM : ANIL S. KILOR, J.**  
**DATED : DECEMBER 07, 2021**

**ORAL JUDGMENT :**

1. This is an appeal arising out of the judgment and decree dated 18<sup>th</sup> September 2018 passed by learned Principal District Judge, Bhandara in Regular Civil Appeal No. 6 of 2017 maintaining and confirming the judgment and decree passed by learned Civil Judge Junior Division, Lakhani in Regular Civil Suit No. 28 of 2012 on 23/12/2016 decreeing the suit for specific performance filed by the plaintiff/ respondent No.1 herein.

2. Brief facts of the present case for consideration of the controversy involved in the present appeal, are as follows. (The parties are referred as per their status before the trial Court):

3. Plaintiff/respondent No.1 filed suit for specific performance. In the said suit it is the case of the plaintiff that the husband of defendant No.1 and the father of defendant No.2 viz. Siddharth Borkar had executed an Agreement to Sell the suit property namely Gut No.484, 485 at village Kaneri, Tahsil :

Lakhani, District : Bhandara by accepting earnest amount of Rs.30,000/-.

4. It is the case of the plaintiff/respondent No.1 that the husband of defendant No.1 and the father of defendant No.2 had executed an Agreement to sell the suit property and accepted Rs.30,000/- towards earnest amount. The husband of the defendant No.1 and the father of defendant No.2 died and thereafter, the defendant No.1 accepted the remaining amount of consideration of the contract from time to time from the plaintiff.

5. It is further the case of the plaintiff that though it was agreed by the defendant No.1 to execute Sale Deed on 31/03/2011, she did not turn up to execute the sale deed.

6. It is further contended that the defendant No.1 on 07/04/2011 executed the sale deed of the suit property in favour of defendant No.3 and therefore, the suit was filed by the plaintiff.

7. The defendant Nos. 1 and 2 by filing their written

statement denied the contentions raised by the plaintiff. The defendant No.3 contested the suit by filing his written statement and claimed to be the bonafide purchaser and having possession of the suit land.

8. The learned trial Court, after considering the oral as well as documentary evidence available on record, decreed the suit in favour of the plaintiff and directed the defendant Nos. 1 and 2 to execute the Sale Deed of the suit property vide judgment and decree dated 23<sup>rd</sup> December 2016.

9. Feeling aggrieved by the said judgment and decree, the defendant No.3/appellant carried an appeal before learned Principal District Judge, Bhandara, which came to be dismissed vide judgment and decree dated 18<sup>th</sup> September 2018, the same is under challenge in this appeal.

10. I have heard the learned counsel for the respective parties.

11. This Court on 4<sup>th</sup> March 2019 has framed following Substantial Question of Law :

*“Whether the case put up by plaintiff before the trial Court would disentitle the plaintiff for discretionary relief as contemplated under section 20 of the Specific Relief Act?”*

12. Shri Ghare, learned counsel appearing for the defendant No.1/ appellant submits that in view of the fact that the defendant No.3 is in possession of suit property and in view of the Sale Deed dated 07/04/2011 (Ex.103) executed in his favour, the Court ought not to have exercised discretion in favour of the plaintiff.

13. It is submitted that the relief for specific performance is a discretionary and equitable relief which course ought not to have exercised in favour of the plaintiff.

14. He submits that even the Courts below have not held in favour of the plaintiff as regards to the possession and therefore, according to him, both the Courts below have erred in decreeing the suit for specific performance in favour of the plaintiff.

15. On the other hand, Shri Quazi, learned counsel for the plaintiff/respondent No.1 has pointed out that the defendant No.1 has categorically admitted in her cross-examination that she did not receive any sale consideration while executing Sale Deed in favour of defendant No.3.

16. It is further pointed out that she has also admitted that the Sale Deed executed in favour of defendant No.3, is a nominal sale deed.

17. Thus, the learned Courts below have observed that to defraud the plaintiff and to avoid execution of the sale deed in favour of the plaintiff, the defendant No.1 had executed nominal sale deed in favour of the defendant No.1.

18. Nothing has been pointed out by the learned counsel for the appellant to show perversity in the said finding.

19. In view of the said findings, even if the defendant No.3 is claiming to be in possession of the suit property, it cannot be said that the learned Courts below have wrongly exercised the discretion

in favour of the plaintiff and granted equitable relief of specific performance.

20. Both the Courts below have discussed oral as well as documentary evidence in detail and thereon arrived at a conclusion that the plaintiff has made out a case for grant of decree of specific performance. In absence of any perversity pointed out by the learned counsel for the appellant in finding of fact recorded by both the Courts below, I do not find any merit in the present appeal.

21. Accordingly, I have answered the Substantial Question of Law, in the above terms. Thus, I pass the following order:

The appeal is **dismissed**. No order as to costs.

( ANIL S. KILOR, J )

*RRaut..*

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K NAIR

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