

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

**SECOND APPEAL NO. 432 OF 2019
WITH CA NO. 9010/2019 IN SA NO. 432/2019**

- 1) Shri. Uttamrao Ramrao Deshmukh,
Age 59 years, Occ. Agriculture,
Through GPA
Shri. Dinkar Ramrao Deshmukh.
- 2) Shri. Dinkar Ramrao Deshmukh,
Age 57 years, Occ. Agriculture,
Both R/o. Mehrunbare, Tq. Chalisgaon,
District Jalgaon.

... **Appellants.**
(Orig. Defendants)

VERSUS

- Shri. Jayant Bhimrao Patil
(Since deceased, through legal heirs)
- 1) Sushma Jayant Patil,
Age 51 years, Occ. Household.
 - 2) Sakshi Jayant Patil,
Age 25 years, Occ. Household.
 - 3) Nil Jayant Patil,
Age 20 years, Occ. Education,
All r/o. Opposite Blind School,
Kargaon road, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon.

... **Respondents.**
(Original plaintiffs)

**WITH
SECOND APPEAL NO. 440 OF 2019
WITH CA NO. 9121/2019 IN SA NO. 440/2019**

Shri. Dinkar Ramrao Deshmukh,
Age 57, Occupation Agriculture,
R/o. Mehrunbare, Tq. Chalisgaon,
District Jalgaon.

... **Appellant.**
(Orig. Defendant)

VERSUS

Sau. Shila Anant Patil,
Age 51 years, Occ. Business,
R/o. Jaishankar Nagar, Bhadgaon
Road, Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.

... **Respondent.**
(Orig. Plaintiff.)

**WITH
SECOND APPEAL NO. 528 OF 2019
WITH CA NO. 10869/2019 IN SA NO. 528/2019**

- 1) Shri. Ramrao Dodhu Deshmukh,
(Since deceased through legal heirs).
- 1A) Shri. Uttamrao Ramrao Deshmukh,
Age 59 years, Occ. Agriculture,
Through GPA
Shri. Dinkar Ramrao Deshmukh.
- 1B) Sau. Mangal Vijayrao Deshmukh,
Age 64 years, Occ. Household,
R/o. Keshavnagar, Ring Road, Gajraj,
Ashirvad Apartment, Akola, Akola.
- 1C) Smt. Asha Namdeorao Ahirrao,
Age 61 years, Occ. Household,
R/o. Jyotinagar, Sahkar Bank
Colony, Aurangabad, Dist.
Aurangabad.
- 1D) Sau. Usha Dipak Ronge,
Age 53 years, Occ. Household,
R/o. Khaparde Bagicha, Amravati,
Dist. Amravati.
- 1E) Shri. Dinkar Ramrao Deshmukh,
Age 57 years, Occ. Agriculture,
Both r/o. Mehrunbare, Tq. Chalisgaon,
Dist. Jalgaon.
All through GPA
Shri. Dinkar Ramrao Deshmukh.
2. Shri. Dinkar Ramrao Deshmukh,
Age 57 years, Occ. Agriculture,
Both R/o. Mehrunbare, Tq. Chalisgaon,
Dist. Jalgaon.

... **Appellants.**
(Orig. Defendants)

VERSUS

Shri. Anant Bhimrao Patil,
Age 57 years, Occ. Business,
R/o. Jaishankar Nagar, Bhadgaon,
Road, Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.

... **Respondent.**
(Original plaintiff)

...

Advocate for the Appellants : Mr. Wani Girish V.
Advocate for the respondents : Mr. R.D. Biradar.

CORAM : MANGESH S. PATIL, J.
DATE : 19.01.2022.

JUDGMENT :

Though these are separate second appeals questioning the legality and correctness of judgments in three separate appeals of the respective appellants which were dismissed by the judgments and orders under challenge, the trial court had decided three separate suits filed by the respective respondents in all these appeals, by a common judgment and order, decreeing the suits for specific performance of agreements executed by the appellants/their predecessor for sale of immovable properties. I, therefore, have heard all these appeals together.

2. Learned advocate Mr. Wani for the appellants would submit that the lower courts have grossly erred in appreciating the facts, circumstances and evidence on record. The respondents had miserably failed to prove that they were ever ready and willing to perform their part under their respective agreements as is required by Section 16 of the Specific Relief Act. He would submit that though as per the terms and conditions of the agreements, the sale-deeds were to be executed on or before 25.05.1992, there was absolutely no evidence to demonstrate about the respondents having ever called upon the appellants to execute the sale-deeds by accepting the balance amounts of consideration. This was a clinching circumstance which has been overlooked by the Courts below, which has resulted in causing injustice to the appellants. Substantial question of law touching this aspect as mentioned in the appeal-memo arises for determination in these second appeals.

3. Mr. Wani would also faintly argue that it was consistent stand of the appellants that in fact these agreements were never intended to be acted

upon and were merely executed to secure the money that was lent by the respondents to the respective appellants/their predecessor.

4. Learned advocate Mr. Biradar for the respondents would submit that since it is an appeal under Section 100 of the Code of Civil Procedure, this Court cannot travel beyond the circumscribing limits on its powers to cause interference in the concurrent findings of facts of the Courts below. He would submit that by appreciating all the facts and circumstances and analyzing the evidence, the trial court as also the appellate Court have squarely met the arguments advanced before them on the lines those are being advanced by Mr. Wani in these appeals. By no stretch of imagination these conclusions of the Courts below can be said to be perverse or arbitrary so that this Court can undertake a further scrutiny of facts.

5. I have carefully considered the rival submissions and perused the papers. As can be gathered, as far as execution of agreements of sale are concerned, the appellants have not disputed the fact. The appellants' stand that those were the money lending transactions and the agreements were executed only to secure the money has been scrutinized by the two Courts below. They have clearly demonstrated that no sufficient and cogent evidence to substantiate such contention was led. There was also a positive evidence in the form of testimony of one Executive Editor of a newspaper Mr. Ravindra Kumar (P.W. 5) who vouched about one of the defendants Uttamrao having given a notice for publication in his newspaper inviting offers for sale of his land. The lower courts have also noticed that except the bald statements of the respective appellants in the testimonies there was not sufficient and cogent evidence to substantiate their contention about the transactions being money lending transactions.

6. For that matter, even some attempt was made by leading evidence to demonstrate that the amount was repaid by the appellants to the respective respondents. However, even in that respect there was not sufficient and

cogent evidence.

7. As regards readiness and willingness, an aspect which is relevant under Section 16 of the Specific Relief Act, specific issues were framed in each of these suits and the trial Court as also appellate Court have extensively considered this aspect as well. They have precisely pointed out that though the agreements mentioned that the sale-deeds were to be executed on or before 25.05.1992, the appellants had accepted a part of consideration even after that date. They have also pointed out that a substantial portion of the consideration was parted with by the respondents which was in the form of intermittent payments which were sufficient to disclose that they were always ready and willing to perform their part of the contract. The conclusions by the two Courts below having been drawn on the basis of such analysis of the aforementioned facts, circumstances and the evidence, in my considered view, the view taken by them being a plausible view, no substantial question of law touching this aspect arises for determination by this Court.

8. In the result, going by the reasoning given by the two Courts below and the analysis of evidence done by them, in my considered view no substantial question of law arises for determination in these second appeals.

9. The Second Appeals are dismissed in limine, with costs.

10. Pending Civil Application Nos. 9010/2019, 9121/2019 and 10869/2019 are disposed of.

(MANGESH S. PATIL, J.)

mkd/-