

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

950 SECOND APPEAL NO.552 OF 1992

BHAGWAN VISHWANATH PATIL.
VERSUS
MANIK KESHAVRAO KULKARNI.and OTHERS.

...
Advocate for Appellant : Mr. N.P. Patil (Jamalpurkar)

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CORAM : ARUN R. PEDNEKER, J.
DATED : OCTOBER 13th, 2022.

PER COURT :

1. This second appeal arises out of dismissal of the suit for specific performance bearing R.C.S. No. 285/1979 on 3.2.1984, which is confirmed by the appellate Court by judgment and order dated 20.3.1989 filed in Regular Civil Appeal No. 71/1984. The plaintiffs had filed the suit for specific performance of agreement dated 28.9.1976 before the Civil Judge, Junior Division, Ausa in R.C.S. No. 285/1979. By the said agreement dated 28.9.1976 the defendant's father had agreed to sell 10 Guntas land for consideration of Rs.1,000/- and had executed the deed of agreement.
2. The suit was dismissed on two counts. The Trial Court held that the plaintiffs were not ready and willing to perform their part of the agreement and secondly, it held that since the original vendor had expired, it was necessary for the plaintiff to array his legal heirs as party respondents. The said findings were maintained by the appellate Court.
3. The learned counsel in this second appeal submits that since the plaintiff had paid the entire amount of consideration, the question of readiness and willingness does not arise. As regards the second ground, he submits that they were under the impression that it is joint inherited family

property and as such, the daughters were not required as parties to the suit. Both the courts having rendered the findings that the daughters have inherited interest in the land, this finding is not open to challenge in absence of pleading that the suit land was joint inherited land.

4. As regards readiness and willingness, it appears that entire amount was paid, however, no steps were taken for execution of the sale deed for long period of time. In this second appeal, since there is finding of both the Courts that the daughters were necessary to the suit and no specific performance can be granted, no substantial question of law arises for consideration by which the relief can be granted to the appellant. Hence, the appeal is dismissed.

[ARUN R. PEDNEKER J.]

ssc/