

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.509 OF 2020
WITH
INTERIM APPLICATION NO.4151 OF 2019
IN
SECOND APPEAL NO. 509 OF 2020
(modified as per order dated 4/8/2022)

Girish Uttamrao Kohok .. Appellant
Versus
Ratan Hiraji Deore and anr. .. Respondents
...

Mr.Milind Sathaye, Advocate for the Appellant.
Mr.Pramod G. Kathane for respondent no.1.
Mr.Prashant P. Prabhu for respondent No. 2

CORAM: BHARATI DANGRE, J.
RESERVED : 6th APRIL, 2022
PRONOUNCED : 5th MAY 2022.

JUDGMENT:-

1 Second Appeal deserve an admission on the following substantial questions of law :-

(L) Whether the Lower Appellate Court, was justified in not appreciating that general rule is to grant specific performance unless strong equities lie against the Plaintiff? In the present matter, in fact equities lie in favour of the appellant/plaintiff ?

(M) Whether the Lower Appellate Court was perverse in holding that the Plaintiff must prove that he possessed Rs.5,51,000/- in cash at the relevant time and he was having payment potential and capacity on the date of agreement to pay that amount to Defendant No.17?

(N) Whether the Lower Appellate Court was perverse in holding that the Plaintiff ought to have filed his bank statement or income tax record to prove his financial capacity? and whether the Lower Appellate Court was perverse in drawing adverse inference against the Appellant/Plaintiff for non-production of such record, so as to dismiss his suit for specific performance?

2 Admit.

3 By consent, Appeal is taken up for hearing finally since the parties have placed on record the private paper book/ compilation of documents.

4 The Second Appeal is filed by the original plaintiff, being aggrieved by the judgment of the District Judge-6, Nashik in Regular Civil Appeal No. 45 of 2017, thereby dismissing his First Appeal and allowing the cross objection filed by the original defendant, thereby declining a decree for specific performance in favour of the plaintiff as claimed by him in Special Civil Suit No.197 of 2007.

5 In order to appreciate the questions of law as formulated above, it would be necessary to refer to the necessary facts giving rise to the said question.

6 The Suit property was described in paragraph no.1 of the plaint of Special Civil Suit No.197 of 2007 instituted by the plaintiff, being plot no.7, admeasuring 496.64 sq.m in Survey No.28/2.

Plaintiff pleaded that the original owner of the suit property is one Sou Sanghamitra Khatua and her name was recorded in the land records as “owner”. She entered into a development agreement and also executed general Power of Attorney on 9/11/2001 in favour of one Ratan Hiraji Deore (defendant no.1) vide a document registered with Sub-Registrar of Assurance, Nashik. The said agreement as well as the general Power of Attorney authorize the defendant no.1 to enter into the agreement with any person and the defendant no.1 exercised this right, since he was desirous of developing his land at native place and therefore, wanted to sell the property.

The plaintiff expressed his intention to purchase the property and negotiations between the plaintiff and defendant no.1 resulted in execution of an agreement for sale on 6/10/2005 which is the focal point of the proceedings between the parties. The agreement of sale amongst other conditions included a condition for payment of consideration of Rs.6,51,000/- for the

property and the claim of the plaintiff is on the very date of execution of the agreement to sell, he parted with consideration of Rs.5,51,000/- in cash as a part consideration/earnest money. The agreement contemplate a sale deed to be executed within a period of one month of obtaining the necessary permission under the Ceiling Act, the onus of which was cast upon the defendant no.1. Pleading that the plaintiff was always ready and willing to purchase the suit property, but since the defendant no.1 avoided the completion of the transaction and assured that it is a matter of time when the sale would be completed, the plaintiff issued a notice on 3/3/2007 to the defendant no.1 for completion of the transaction as per the agreement of sale, which was responded to, by the defendant by taking a stand of complete denial. The plaintiff also gained knowledge that the defendant no.1 had already executed a document on 15/12/2006 in favour of defendant no.2 and on obtaining the necessary documents entered into by the defendant no.1 with defendant no.2 in form of a development agreement, expressing his readiness and willingness to discharge his part by paying the balance consideration, he instituted a Suit seeking a decree of specific performance of the agreement by executing the sale deed in his favour and also prayed for costs.

7 The plaint implead Ratan Deore as defendant no.1 and the subsequent purchaser to the said property as defendant no.2. The plaint specifically averred breach on part of defendant

no.1 and highlighted the readiness and willingness on part of the plaintiff to perform his part of the agreement.

On summons being issued, the defendant no.1 filed his written statement and took a stand of complete denial about execution of the agreement of sale dated 6/10/2005 and also denied that he received any consideration from the plaintiff. Denying the very existence of the agreement, all the terms and conditions stipulated therein were specifically denied including the failure on part of the defendant to discharge his part of the agreement as well as executing the agreement in furtherance of the agreement. The defendant no.1 also denied any signatures on the document and refused to acknowledge the signatories on the same.

It was specifically pleaded that the plaintiff had acted as a mediator while obtaining the development rights in favour of the defendant no.1 and at that time, he had proposed some documents necessary to be included under the provisions of Urban Land Ceiling Act, and it was specifically pleaded that at that time, he had obtained signatures and thumb impression on some blank papers on the pretext that they are necessary for notice purpose, but he has put the said signatures to misuse by projecting that an agreement to sale is signed by defendant no.1 for a lawful consideration.

8 As far as defendant no.2 is concerned, he also filed a written statement and pleaded to be a bonafide purchaser vide registered conveyance and pleaded that the suit property is only an area admeasuring 496.64 out of Survey No.28/2 and before development, the lay out plan is required to be sanctioned and he is in the process of obtaining the requisite permission.

9 The trial Court upon examining the plaint and the written statement formulated the following questions of law :-

“1 Is it proved by the plaintiff that defendant no.1 entered into agreement for sale dated 6.10.2005 with respect to the suit property and he has paid amount of Rs.5,51,000/- and is ready and willing to pay balance amount after sanction/permission under Section 27 of Urban Land Ceiling Act?

2 Is it established by the defendant that no agreement for sale was entered into and his signature on agreement for sale dated 6.10.2005 was obtained under guise of permission/sanction under Urban Land Ceiling Act?

3 Whether the additional evidence with respect to Janlaxmi Bank needs to be taken into consideration?

4 Whether the suit is bad for non-joinder of necessary party?

10 In order to prove his case, the plaintiff filed his evidence affidavit (Exhibit-23) as well as examined one Ratan Hirji Deore (Exhibit-38), who had signed as a witness on the

document of agreement of sale. He also produced on record the 7/12 extract of the suit property, the development agreement, copy of general Power of Attorney, notice issued to the defendant no.1, reply to the said notice as well as the agreement to sale (Exhibit-33). The defendant no.1 also entered the witness box by filing his evidence affidavit and was subjected to cross-examination, though the defendant no.2 preferred not to step into the witness box.

On appreciation of the evidence, the Civil Judge, Sr. Division, Nashik partly allowed the Suit with proportionate costs and directed the defendant no.1 to pay an amount of Rs.5,51,000/- to the plaintiff along with interest @ 9% from 6/10/2005 till filing of the Suit and @ 6% p.a. till its realization.

11 Since the specific performance was refused by the First for a, First Appeal was preferred by the plaintiff on the ground that the trial court has failed to appreciate the necessary ingredients of specific performance and has erred in refusing the same, though it held that the agreement for sale dated 6/10/2005 is a document which is proved and an amount of Rs.5,51,000/- was also paid to defendant no.1, and even the readiness and willingness on part of the plaintiff to perform the agreement was recorded. The only ground on which the specific performance was refused to the plaintiff being to the effect, that the Suit premises is a plot of which final lay out is not sanctioned and, therefore, unless and until the lay out is finally sanctioned, the

decree of specific performance in respect of single plot was refused.

In Regular Civil Appeal No.45/2017, the defendant no. 1 also filed his cross objection assailing the decree granted by the trial Court and contending that the judgment and decree is contrary to law, justice and equity and good conscious as the trial Court has not taken into consideration that the plaintiff has failed to lead any evidence with respect to the manner in which amount of Rs.5,51,000/- was paid by the plaintiff to the defendant no.1, since he has not kept record of amount and income and expenditure for the period from 1/4/2005 to 31/3/2006, nor he had paid Income tax return for the said period, which itself is sufficient to arrive at a conclusion, by drawing adverse inference that no such amount was paid.

Upon consideration of the rival claims, the Appellate Court dismissed the Appeal of the plaintiff and allowed the cross objection, thereby setting aside the decree of the trial Court.

12 The fulcrum of the arguments, is the existence of the agreement to sale (Exhibit-33 dated 6/10/2005) since the plaintiff aver that the said document was executed by the defendant no.1 and even consideration was passed over to him, whereas the defendant no.1 denied execution of the agreement itself.

13 I must therefore, turned my attention to the said document. The document captioned as agreement to sale executed on a 50 Rupees non judicial stamp paper refer to the property admeasuring 496.64 sq.m out of Survey No.28/2 (temporary plot no.7) standing in the name of Sou Sangamitra. The recitals of the said agreement refer to a Power of Attorney and development agreement executed in favour of Shri Ratan Devre who was competent to execute a sale deed in respect of the said property.

Expressing the need of money for developing a property at their end and since the plaintiff had an interest in purchasing the suit property, on negotiation, an agreement to sale came to be executed. The salient features of the agreement can be culled out as under :-

“(a) Consideration amount was Rs.6,51,000/-. The amount of Rs.5,51,000/- was paid, in presence of witnesses. The balance amount of Rs.1,00,000/- was to be paid at the time of sale deed.

(b) Entire consideration amount is paid by Defendant No.1 to the original owner. The said property falls within Urban and Ceiling jurisdiction. The same is converted into non-agricultural land vide order dated 20.10.1998.

(c) On the basis of agreement for sale, the plaintiff can enter into an agreement with third person with respect to the suit property and defendant No.1 will consent for it. The consideration amount received to the plaintiff, defendant No.1 will have no right or interest therein.

(d) The possession of the suit property is to be received by the plaintiff after he carried out measurement of the land and if there is any issue with respect to the measurement, the consideration amount will be adjudicated.

(e) The sale deed is to be entered into within one month of getting permission under sec.26 of the Urban Land and Ceiling Act. Defendant No.1 has given his signatures to the plaintiff and even has put his thumb impression on the ceiling papers”.

14 The two questions that arise for determination before the trial Court being, whether the aforesaid documents was executed and whether the plaintiff passed on the consideration of Rs.5,51,000/- to the defendant no.1 and whether he has received it.

In support of his case, the plaintiff filed his evidence affidavit and reiterated his stand that he had passed the consideration in favour of defendant no.1. In the cross-examination, the plaintiff admitted that he had annual earnings of Rs.10 lakhs as he has engaged in the activity of private contractorship and he gave an admission that whatever are his earnings, are shown in his Income Tax returns along with the expenditure. He deposed that from 1/4/2005 to 31/3/2006, he had not maintained accounts nor had he furnished his tax returns. He admitted about a bank account in Janlaxmi Bank, Shivaji Road, Nashik. He denied a specific suggestion that he signed on

the document as a witness on an agreement entered into between defendant no.1 and Smt.Khatua for development. He further admitted that he had not prepared the agreement, but it was prepared by defendant no.1 and he was not aware who had actually prepared it. He admitted that he paid cash of Rs.5,51,000/- which was lying in his house, but he had not intimated about the same to Income tax department. He admitted that he had no document to show that he had cash amount of Rs.5,51,000/- in his house and deny the suggestion that the said amount was not paid.

15 In order to establish the execution of the agreement and payment of consideration, he examined one Prakash Kiragi, who was a signatory to the agreement to sale, as a witness, who deposed that he was aware of the agreement entered into between the plaintiff and defendant no.1 and he was a witness to the negotiations which took place in the house of Dilip Badane. He specifically deposed that the plaintiff and defendant no.1 put their signatures on the agreement in his presence, and at that time, the plaintiff delivered the amount of Rs.5,51,000/- to the defendant no.1.

Subjected to cross-examination, he specifically state that the defendant no.1 brought a typed agreement and after receiving the consideration, he put his signature and thumb impression on the same and the plaintiff and witnesses also put their signatures. He deny the suggestion that he has falsely stated

that an amount of Rs.5,51,000/- was delivered in cash to the defendant.

16 As against this evidence brought from plaintiffs side, the defendant no.1 filed his evidence affidavit and in the cross-examination, he deposed that the suit property was not developed between 2001-2005. He also deposed that he is not aware whether the Power of Attorney and agreement is with him, nor had he read the contents of the development agreement, but admit that on the development agreement, the plaintiff had also signed, but whether there was signature of the defendant no.2 on the same, he is unable to recollect. He admit that the suit property was decided to be developed in the year 2005, but deny the suggestion that an agreement was entered into in respect of the suit property in 2005. On confronted with Exhibit-33, he state that it bear the signature, thumb impression and photographs, but deny that there are signatures of the witnesses. On specifically asked that when the blank papers under his signature were put to use by the plaintiff and whether he has lodged any complaint with the police, his answer is in the negative. He admit that he accompanied the plaintiff to Janlaxmi Bank but whether the account was opened, he is unable to recollect. He admit that the plaintiff had given him amount to be deposited in the bank and the said amount was deposited in his bank account in Janlaxmi Bank.

17 On confronted with Exhibit-33, he admit that the document bears his signature and thumb impression, but state that there was no matter scribed on the paper. While he put his signatures on Exhibit-42 which are the papers relating to ceiling, he had not inquired the purpose of the said documents.

It is this evidence which is appreciated by the trial Court, holding the plaintiff to be eligible for refund of the earnest money by clearly rendering a finding that the plaintiff has proved the document and his evidence remained unshaken and unchallenged. In para-14, the learned Judge answered as under:-

“From the above discussion, it is clear that the recital about the transaction of the suit property is mostly probable and believable. On the contrary, the defendant No.1’s recital about the fraud is most improbable. It can also be concluded that the Deft has not adduced any oral or documentary evidence as it would have gone against him. Similarly, the recital about the said fraud is also liable to be disbelieved as the Defendant No.1 had not taken any action against the Plaintiff since long time. On the other hand, the evidence of Plaintiff about the said transaction is remained unshaken even in their cross examination. In the cross examination of the Plaintiff and his witness, nothing important has come on record which disbelieves the evidence of the plaintiff. After considering above scenario, even though the plaintiff had not kept his account maintained and not paid the income tax for some period, the same cannot affect his case and his evidence about the said transaction. There is some inconsistencies in the evidence of the Plaintiff and

his witness in respect of miscellaneous things, however, after considering above, I am of the opinion that the Plaintiff has proved that the Defendant No.1 entered into a transaction of Agreement of Sale Exh.33 with the Plaintiff for the total consideration of Rs. 6,51,000/- out of which he has paid Rs. 5,51,000/- as an earnest amount to the Defendant No.1, therefore, I have answered Point No.1 affirmatively”.

18 As far as his readiness and willingness is concerned, the following finding is recorded :-

“After considering all the facts and circumstances of the case, it is proved that the Plaintiff has paid very big amount vis-a-vis the total consideration to Defendant No.1 on Agreement of Sale. Moreover, the Plaintiff specifically states that he was always ready to pay balance consideration of Rs. 1,00,000/- to Defendant No.1 and the same is remained unshaken from the Defendant. On the other hand, the Defendant No.1 has neither adduced any evidence nor argued to disprove the same. After perusing the amount paid by the Plaintiff and his unshaken evidence, further Defendant No.1’s conduct of avoiding to execute the sale deed, I am of the opinion that the Plaintiff has proved his readiness and willingness to purchase the suit property”

19 With the aforesaid finding being recorded, the conclusion was that the defendant no.1 has committed a breach and it was concluded that the defendant no.1 had executed agreement of sale in respect of the suit property and for the said transaction, he received Rs.5,51,000/- from the plaintiff and the

plaintiff was ready and willing to purchase the suit property which is sufficient to grant decree for specific performance in favour of the plaintiff for execution of the sale deed.

However, on technical grounds, the trial Judge held that decree for execution of sale deed cannot be granted in his favour. This technical ground is discerned to the effect that, until the lay out is finally sanctioned, the plot could not have been sold and therefore, the decree for specific performance for plot no.7 in temporary lay out of Survey No.28/2 cannot be granted.

The learned Judge is recorded as under :-

“Unless and until the lay out is finally sanctioned, the decree of specific performance in respect of a single plot cannot be granted because granting of such decree would amount to violation of the terms and conditions of Order of Municipal Corporation below Exh.47. In fact, sau Khatau or her duly authorized person should have obtained the final lay out, however, for want of the appropriate authority, the Defendant No.1 cannot be directed to obtain the final lay out. The Plaintiff, for obtaining the final lay out, should have joined the original Landlord or his duly authorized person as a party in the suit. However, he failed to do so. When the Agreement of Sale below Exhibit No. 33 does not state about the approval of the final lay out, the Defendant No.1 cannot be ordered to do the same. Second important thing that the Municipal Corporation, as per its authority, may make changes while approving final lay out. Consequently, if such change happens while sanctioning the final lay out of Survey No. 28/2 and also the area or boundaries of the

Plot No. 7 gets changed, then the sale deed of the suit property would become impossible and, therefore, after considering above factual position I am of the opinion that the decree of the specific performance of the Agreement as sought by the plaintiff is not possible to be granted”.

Based upon this reason, though the plaintiff was held to have proved his case for specific performance, on technical ground, the relief was declined.

20 In Vishwa Nath Sharma Vs. Shyam Shanker Goela and Anr, 2007, 10 SCC 595, the Hon'ble Apex Court dealt with a similar argument, as regards grant of specific performance of sale of immovable property and while construing whether sale of sublease of plot from the development authority would contemplate a prior permission as a pre-condition, it was held that such permission is not a pre-condition for grant of specific performance.

The facts involved in the said case disclose that the plaintiff filed a Suit claiming decree for specific performance of an agreement to sell a plot subleased to defendant no.1 by the Co-operative Society, which in turn, has been leased by the Delhi Development Authority. The defendant no.1 entered into an agreement to sell with the plaintiff for a consideration and some amount was received towards part payment with the balance

being payable within 15 days after receipt of approval of building plan.

The plaintiff alleged that the defendant no.1 in an attempt to wriggle out of the deed fraudulently transferred the plot by way of gift in favour of his son. The defendant contested the Suit by alleging that the plot was not saleable and even if there was an agreement to sell, the same was void as there was no contract to sell the plot and the transfer of which was prohibited under the clauses of the lease deed and of the sublease executed between the Society and the defendant no.1. The Courts below decreed the Suit and the defendant approached the Supreme Court by filing the SLP.

21 The argument on behalf of the appellant was, the two Courts had failed to appreciate that there was an impediment on the transfer, which was prohibited by DDA and it could not have been enforced by a decree in Suit for specific performance. The counter argument advanced was lack of permission, cannot act as an absolute bar on a decree being passed and the decree may not be executable.

Recording that the plaintiff was ready and willing to perform the part of the agreement and if DDA refused to grant permission, a Suit for damages could be filed. Referring to the decision of the Privy council, their Lordships held as under :-

“The Privy council in *Motilal v. Nanhelal*, AIR 1930 P.C. 287, laid down that if the vendor had agreed to sell the

property which can be transferred only with the sanction of some government authority, the court has jurisdiction to order the vendor to apply to the authority within a specified period, and if the sanction is forthcoming, to convey to the purchaser within a certain time. This proposition of law was followed in [Mrs. Chandnee Widya Wati Madden v. C.L. Katial](#), (AIR 1964 SC 978), and [R.C. Chandiok v. Chuni Lal Sabharwal](#) (AIR 1971 SC 1238). The Privy Council in Motilal's case (supra) also laid down that there is always an implied covenant on the part of the vendor to do all things necessary to effect transfer of the property regarding which he has agreed to sell the same to the Vendee. Permission from the Land and Development Officer is not a condition precedent for grant of decree for specific performance. High Court relied upon its decision in [Mrs. Chandnee Widya Madden v. Dr. C.L. Katil](#) (supra) and [Maharo Saheb Shri Bhim Singhji v. Union of India](#) (AIR 1961 SC 234) to substantiate the conclusive. In Mrs. Chandnee Widya (supra) this Court confirmed the decision of the Punjab and Haryana High Court holding that if the Chief Commissioner ultimately refused to grant the sanction to the sale, the plaintiff may not be able to enforce the decree for specific performance of the contract but that was not a bar to the Court passing a decree for that relief. The same is the position in the recent case. If after the grant of the decree of specific performance of the contract, the Land and Development Officer refused to grant permission for sale the decree holder may not be in a position to enforce the decree but it cannot be held that such a permission is a condition precedent for passing a decree for specific performance of the contract.

[In Ramesh Chandra Chandiok and Anr. v. Chuni Lal Sabharwal](#) (dead) by his legal representatives and Ors. (AIR 1971 SC 1238) it was held that proper form of decree in a case like the instant one would be to direct specific performance of the contract between defendant and the plaintiff and to direct the subsequent transferee to join in the conveyance so as to pass on the title residing in him. This is because defendant no.2 son of defendant no.1 cannot take the stand that he was a transferee without notice. Admittedly,

he is son of defendant no.1. The view in Ramesh Chandra's case (supra) was a reiteration of earlier view, in [Durga Prasad and Anr. v. Deep Chand and Ors.](#) (AIR 1954 SC 75). This Court has repeatedly held that the decree can be passed and the sanction can be obtained for transfer of immovable property and the decree in such would be in the way the High Court has directed.

22 In the wake of the aforesaid position of law as enunciated by the Hon'ble Apex Court, the very basis and foundation of the decision of the trial Court that unless and until the lay out is finally sanctioned, the decree for specific performance in respect of a single plot cannot be granted as it would amount to violating the terms and conditions of the order of Municipal Corporation, is apparently incorrect. The trial Court has erred in holding that the defendant no.1 cannot be directed to obtain the final lay out and if the Municipal Corporation make any changes while approving the final lay out, the boundaries of plot no.7 would get changed and the sale deed of the suit property would be impossible and that is why the specific performance has been denied.

The position of law being clearly emerging to the effect that the Court could have ordered the defendant to apply to the authority within specified period and merely because the plot was not sub divided by sanctioning a final lay out, the trial Court was not justified in refusing specific performance, as it cannot be construed as a condition precedent for passing a decree

for specific performance, once the other parameters for grant of specific performance are held to have been satisfied. The Civil Judge, Sr. Division has refused the specific performance only on this ground and held the plaintiff entitled for refund of the amount of Rs.5,51,000/- along with interest.

23 The Appellate Court dealing with the Appeal dismissed the same and allowed the cross objection filed by the defendant, though being informed that during the pendency of the Appeal, the final lay out plan was sanctioned and placed on record.

Upholding the finding of the trial Court that specific performance cannot be granted in case of tentative lay out, it set aside the finding of the trial Court, recording that document Exhibit-33 is genuine. Further, the Appellate Court held that the trial Court has erred in not appreciating that the amount of Rs.5,51,000/- being huge amount, the plaintiff ought to have established the factum by producing some documentary evidence showing his sound financial condition, that the amount was readily available with him on the day when the transaction took place. Secondly, holding that the plaintiff has not established that he paid amount of Rs.5,51,000/-, as part consideration the cross-objection of the defendant no.1 was allowed.

24 The Appellate Court has set aside the finding of the trial Court that the plaintiff has paid amount of Rs.5,51,000/- as

part consideration while executing the agreement for sale, merely because he has not shown the source from where the amount was paid and that he has not produced bank statement or previous Income tax record, disclosing his financial capacity, and the said fact not being proved, resulted in drawing adverse inference, against the plaintiffs.

25 The Appellate Court has failed to consider the evidence of the independent witness Prakash Kirgi, who stepped into the witness box in support of the plaintiff, by stating that the talks as regards the agreement to sell was initiated between the plaintiff and the defendant no.1 in his presence and a consideration of Rs.6,51,000/- was fixed. He had specifically deposed that the plaintiff brought a stamp paper and the defendant no.1 proceeded to get the matter typed on it, whereas the plaintiff went home to bring the amount of consideration. The parties put their signature in presence of the said witness and Prakash Kirgi and another witness Santosh Kamankar also signed the said document and the plaintiff handed cash of Rs.5,51,000/- to the defendant. The cross-examination do not discredit him merely on the ground that he was unable to answer how many notes were in the denomination of Rs.100/Rs.500, as he has specifically stated that there was a packed bundle of notes, but he denied the suggestion that the amount of Rs.5,51,000/- was not paid by the plaintiff to the defendant. The said evidence has been completely ignored by the trial Court.

In the cross-examination, the defendant no.1 admit that he received money in his bank account and the plaintiff had given money to be deposited in his account. In the cross-examination, he also admit that he had never put his signature on blank paper and on every occasion, after reading the documents, he signed the same and his signature is recorded on Exhibit-33. The defendant no.1 however, state that when he had put the signature, there was no matter written on the said paper, but admitted that he has not lodged any complaint or made any grievance about his signatures and thumb impression being taken on blank paper. The defendant no.1 has also admitted that he has signed a form for ceiling purpose, but never inquired what was the purpose for which his signature was taken.

26 The trial Court has rightly held that the document at Exhibit-33 was duly proved by the plaintiff and his witness PW 2 who has deposed that the document was executed in his presence and after the plaintiff and the defendant signed the same and affixed their photographs, he had signed as a witness. He also state that the plaintiff paid part consideration to the defendant no.1 which was received by him. Since the readiness and willingness of the plaintiff is also specifically proved, the Appellate Court has reversed the finding of the First Court only on the ground that the plaintiff has failed to reveal the source from which he procured the sum of Rs.5,51,000/- as part consideration, in utter ignorance of the fact that the said amount

was delivered in presence of PW 2, whose evidence has not been doubted.

27 The judgment of the Appellate Court has thus erroneously, reversed the finding of the trial Court. The trial Court has refused specific performance to the plaintiff only on the specious ground that the suit property is not in existence as the temporary lay out of Survey No.28/2 was yet to be finally sanctioned. In fact, at the time when the Appellate Court decided the Appeal, the lay out was sanctioned and there was no difficulty posed in granting the specific performance.

28 Answering the specific question of law framed as (m) and (n) on which the Appeal was admitted, by rendering a finding that the Appellate Court has committed a grave error in holding that the plaintiff has failed to prove that he possessed Rs.5,51,000/- at the relevant time and having payment potential and capacity. The Appellate Court has also rendered a perverse finding in recording that the plaintiff ought to have filed his bank statement or income tax record to prove his financial capacity, and in absence of which an adverse inference could be drawn, since the say of the plaintiff and his witness about payment of part consideration, did not suffer any damage at the instance of defendant no.1. The fact of payment of part consideration by plaintiff to defendant no.1, clearly surfaced on record before the trial court through evidence.

29 Since the appellant has made out a case for specific performance by proving the existence of the documents Exhibit-33, the equity lie in favour of the appellant/plaintiff and when the impediment of the lay out not being sanctioned stand removed, as on date, the appellant/plaintiff deserve the relief of specific performance.

 Holding him to be entitled for the said relief, the decision of the First Appellate Court is set aside along with the finding of the trial Court, referring to specific performance of sale deed, being referred only on technicality of the plot not being subdivided.

 The Suit of the plaintiff is decreed by granting specific performance in his favour.

 Decree be drawn accordingly.

 In view of the disposal of Second Appeal, Interim Application No. 4151 of 2019 do not survive and is disposed off.

(SMT. BHARATI DANGRE, J.)