

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

SECOND APPEAL NO. 369 OF 2022

APPELLANTS: 1) Manohar Dayaram Kela (dead).

(Ori. Respondents/ 1(A) Ghanshyam s/o Manohar Kela,
defendants) Aged about 50 years, Occu: Business

(On R.A.) 1(B) Shyamsunder s/o Manohar Kela,
Aged about 43 years, Occu: Business Nos.
1 and 2 both r/o Dhangar Nagar,
Near Railway Gate, Shegaon, Tahsil
Shegaon, District Buldhana.

1(C) Sau. Saroj w/o Mahendrasingh Mohata,
Aged about 46 years, Occu: Household,
R/o "Dwarka", Kate Galli, Near Bhopali
Park, Nasik, Tahsil and District Nasik.

1(D) Sau. Chanda w/o Premratan Rathi,
Aged Adult, Occu: Household, R/o Infront
of Jaypuriya Balak Mandir, Gandhi Nagar,
Yavatmal, Tahsil and District Yavatmal.

2) Sau. Mohini w/o Manohar Kela,
Aged about 55 years, Occu: Household,
R/o Near Railway Gate, Akot Road,
Shegaon, Tahsil Shegaon, District Buldana.

...VERSUS...

RESPONDENTS 1) Rajesh Shantilal Jain (Lalwani)
(Org. Appellants/
Plaintiff) Aged 54 years, Occu: Agriculture
(On R.A.) R/o 56, Jai Nagar, Devdarshan Apartment
Jalgaon, Tahsil and District Jalgaon
(Khandesh)

2) Rameshkumar Bansilal Sanghavi (dead)

2-A) Smt. Suryakanta w/o Ramesh Sanghavi,
Aged about 76 years, Occu: Household.

2-B) Hitesh Ramesh Sanghavi,
Aged about 46 years, Occu: Business,
Nos. 2 and 3 both R/o Flat No. 102,
Shri Complex, Sector 3, Ghansoli,
Mumbai.

2-C) Sau. Sarita Rajendra Lodha,
Aged about 50 years, Occu: Household
c/o Rajendrakumar Lodha, R/o
New Tambat Lane, Ravivar Peth, Ashok
Stambha, Nasik, Tahsil and District Nasik.

2-D) Sau. Sangita Nilesh Lalwani,
Aged about 48 years, Occu: Household,
R/o 56, Jay Nagar, Devdarshan Apartment,
Behind Omkareshwar Temple, Jalgaon,
Tahsil and District Jalgaon.

2-E) Sunita Ramesh Tatiya,
Aged about 52 years, Occu: Household,
Darshan Readymades, Agra Road,
Near Bombay Hotel, Igatpuri, Nashik.

Shri A.C. Khare, Advocate for the appellants.

Shri A.V. Bhide. Advocate for the respondent No.1(self) and POA
for the respondent Nos. 2(A) to 2(E).

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 13/12/2022

ORAL JUDGMENT :

1. This appeal is filed challenging the order dated
14/02/2022 passed by the learned Additional Judge-2, Khamgaon,

District Buldhana in Regular Civil Appeal No. 69/2012, thereby allowing the appeal and setting aside the judgment and order dated 10/04/2006 passed by the Civil Judge, Senior Division, Khamgaon District Buldhana passed in Special Civil Suit No. 38/2002.

2. The appellants are the original defendants and the respondents are the original plaintiffs. The parties in this appeal are described as per their original status in the suit. The defendants were the owners of the agricultural land, admeasuring about 4.80 H.R. Out of which, the defendants have agreed to sell 1.21 HR land from eastern side to the plaintiffs, which is the subject matter of the present suit. There was an agreement dated 25/01/2000 for consideration of Rs. 9,15,000/-. The defendants paid an amount of Rs. 2 Lakhs and the balance amount of Rs. 7,15,000/- was to be paid at the time of execution of sale deed. The said agreement was executed on 24/01/2000. As per terms of the agreement, the sale deed was to be executed on or before 24/12/2000.

3. One of the conditions in the agreement that the defendants agreed that they will get measured the suit property at the cost of plaintiffs and after measurement, the defendants will execute the sale deed and deliver the possession of suit property to

the plaintiffs.

4. The contention of the plaintiffs is that he has paid Rs.15,000/- to the defendants for the purpose of measurement of the land in question. It is also admitted fact that the plaintiffs issued notices to the defendants on 14.3.2021 and 28.7.2001, requesting them to measure the suit land and perform their part of contract. He also issued notice on 23/02/2002 to the defendants to perform their part of contract, failing which, the plaintiffs would be constrained to file the suit for specific performance of contract.

5. The defendants by way of written statement denied the fact that the plaintiffs have paid amount of Rs. 15,000/- for the purpose of measurement. It was the contention of the defendants that they were in need of money for business of his son which idea ultimately stood cancelled therefore they cancelled the contract and they have replied the letters issued by the plaintiffs. The defendants further stated that they have many times requested the plaintiffs to complete the transaction, even he purchased the stamp papers for sale deed on 21-12-2000 and attended the office of the Sub-Registrar on 26-12-2000 and 29-12-2000, but plaintiffs have not appeared before them.

6. I have heard the learned Counsel for the parties and perused the record.

7. Upon perusal of the judgment of the learned trial Court it reveals that the learned trial Court has recorded the findings that the plaintiffs are ready and willing to perform their part of contract. However, suit was partly decreed by directing refund of amount.

8. It appears from the record that the defendants intended to sell the suit property to the plaintiffs to raise capital for the business of their son. From the evidence of the defendants it appears that the defendant's son cancelled the plan of his business, therefore, the very cause of transaction is frustrated.

9. The appellate Court after considering the evidence on record confirmed the finding that the plaintiffs have ready and willing to perform their part of the contract. It was further held that time was not essence of the contract. I do not see any perversity in the finding recorded by the learned Appellate Court. The learned trial Court though recorded the finding in favour of the plaintiffs about readiness and willingness as well as time was not essence of the contract, however, not granted relief of specific performance only for the reason that the defendants intended to sell the suit

property to the plaintiff to raise capital for the business of their son and the said idea was cancelled. For this reasons, learned trial Court ought not to have rejected the claim of specific performance.

10. On perusal of Exhibit No.24 i.e. agreement to sell, it would reveal that defendant/vendor was required to perform his part of contract by applying for measurement. Both the Courts below rightly recorded finding against issue of readiness and willingness. The learned Appellate Court was right in granting relief of specific performance. It is apparent on record that the defendants failed to apply for measurement, therefore, the question of deposit of amount for measurement would not arise. As such, the grant of relief of specific performance on the concurrent finding of readiness and willingness and execution of agreement, needs no interference.

11. One of the grounds raised by the defendants in cross-examination that due to propose project of Jigaon Irrigation Dam there were restrictions about execution of sale deed of lands at Shegaon. However, there is no evidence or proof to that effect on record produced by the defendants, as such, the learned Appellate Court rightly come to the conclusion that there is no reason not to

grant specific relief. The appellate Court further recorded a finding that there is ample evidence on record to show that the defendants were disinterested in execution of sale-deed and plaintiff was ready and willing to perform their part of contract.

12. Perusal of the record of the trial court it appears that the plaintiffs were issued notices to the defendants to measure the land, but the same were not replied by the defendants. The learned trial court further held that the plaintiff had purchased the stamp after giving the defendants legal notice and was present before the Sub Registrar Office. However, defendants failed to appear before the Sub Registrar Office for execution of sale-deed. Though the sale-deed was to be executed on or before 24/12/2000, it cannot be treated as time was essence of contract, in view of the fact that certain condition are to be complied with before execution of sale-deed. The relief of grant of specific performance in view of above facts needs not interference.

13. As such, there is no substantial question of law involved in the present appeal and the same is liable to be dismissed. Accordingly, the appeal is **dismissed**.