

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

SECOND APPEAL NO. 686 OF 2015  
WITH CA/15684/2015 IN SA/686/2015

**JUBERKHAN GULMOHAMMAD KHAN AND OTHERS  
VERSUS  
BALIRAM RANGNATH BANSODE AND OTHERS**

...  
Advocate for Appellants : D.S. Bharuka  
and Mr.Padalkar Harshad

Advocate for Respondent Nos. 1 & 2 : Mr. P.K. Palve  
Advocate for Respondent No. 3 : Mr. R.S. Deshmukh Senior Advocate  
a/w. Mr. Jay Veer i/b. Mr. Devang Deshmukh  
Advocate for Respondent No. 9 : Mr. R.S. Shinde  
Senior Advocate Mr. Deshmukh

**CORAM : R.M. JOSHI, J.**

**DATE : 03<sup>rd</sup> May, 2023**

**PER COURT :**

1. This Second Appeal is preferred by original defendants no. 2 to 5 taking exception to the judgment and decree passed in Special Civil Suit No. 14 of 2006 granting specific performance of contract in favour of plaintiffs which is confirmed in Regular Civil Appeal No. 118 of 2012 by judgment and decree dated 23.03.2015. Appellants / defendants no. 2 to 5, are the purchasers of Gat No. 55, subsequent to agreement to sale entered into between plaintiffs and defendants no. 1, 6 to 13. Parties are referred by nomenclature in suit. By consent of both sides decided finally at the stage of admission.

2. Plaintiffs have filed suit for specific performance on the basis of agreement to sale executed by defendant no. 1 and defendant nos. 6 to 13, in respect of Gat Nos. 55 and 56 (suit lands) situated at Village Peersawangi, Taluka Badnapur, District Jalna. Plaintiffs have sought declaration that the sale deed dated 30.01.2006, executed by defendant no. 1 in favour of defendant nos. 2 to 5 is illegal and not binding on them. Averments are made about the defendants no. 1 and 6 to 13, being heirs of Protected Tenant in respect of suit properties and understanding between them that plaintiffs would fight the litigation on their behalf in respect of suit properties and also about an agreement to sell 1/2 portion thereof. Pleadings further show about settlement between them and execution of agreement to sale dated 06/02/2004. Immediately thereafter an application was made to Authority under the Act in respect of Gat No. 56 for seeking permission to sale. However, defendant no. 1 and others executed sale deed of land admeasuring 8 H 60 R from Gat No. 55 in favour of defendants no. 2 to 5.

3. Defendants no. 1 and 2 to 5 denied contention of plaintiffs about request to look after litigation etc. It is claimed that power of attorney in favour of plaintiff no. 1 is rightly cancelled. It is further stated that defendants no. 2 to 5 approached them for purchase of Gat

No. 55 to extent of 8 H 60 R and registered sale deed is executed. It is alleged that plaintiff no. 1 is signatory to agreement to sale dated 07/01/2006, executed before defendants no. 1, 6 to 13 and defendants nos. 2 to 5. It is claimed that defendant nos. 2 to 5 are bonafide purchasers for value without notice.

4. Defendants no. 6, 7 and 13 filed written statement admitting claim of plaintiffs.

5. Learned Trial Court framed issues and both sides led evidence to substantiate their respective case. Trial Court decreed suit by directing specific performance of contract in respect of suit lands and issued further direction to defendants no. 1, 6 to 13 to move Competent Authority for necessary permission within three months. In failure thereto, further direction was given to these defendants to refund a sum of Rs. 4 lacs along with further interest @ 12 % p.a. from date of decree till realization. It is further held that sale deed dated 30/01/2006 executed by defendant no. 1 in favour of defendant nos. 2 to 5 is declared as null and void and not binding upon the plaintiffs. Finally, injunction is granted restraining defendants from interfering in plaintiffs possession over suit properties. Though defendants no. 2 to 5, challenged said decree before First Appellate Court but defendants

no. 1, 6 to 13 did not take exception thereto.

6. Learned counsel for appellants / defendants no. 2 to 5 submits that having regard to the fact that 10 years have lapsed from purchase of land, provisions of Section 15 (b) (c) of Hyderabad Tenancy and Agricultural Lands Act, 1950 (For short 'Tenancy Act') have no application to present case. He further argued that both Courts below have committed serious error of law by holding that the sale deed executed in respect of the suit properties by defendant no. 1 in favour of these defendants is null and void for non compliance of Section 50 B (2) of Tenancy Act and in any case the said issue could not have been gone into and decided by Civil Court. In Support of his contentions, he placed reliance of judgment of this Court in Second Appeal No. 391 of 2010 in case of *Sitaram S/o. Goba @ Gobarya Chavan Versus Sow. Kaveribai @ Kalawatibai W/o. Dasu Rathod*. It is also stated that the said judgment was carried up to the Hon'ble Apex Court, wherein, the same is confirmed in Civil Appeal No. 5854 of 2015. It is further argued that plaintiffs have failed to prove readiness and willingness to perform their part of contract and hence on that ground decree is not maintainable. It is further argued that in spite of the fact that half portion of Gat Nos. 55 and 56 was allegedly agreed to sale, but Trial Court has granted specific performance of the

contract in respect of the entire land. On these amongst other grounds raised specifically in memo of appeal, impugned judgment and decree is challenged.

7. Per contra, learned counsel for plaintiffs supported the impugned judgment and decree with contention that plaintiffs have proved execution of agreement to sell and established readiness and willingness to perform their part of contract. According to him, since defendants no. 2 to 5 have failed to prove themselves to be bonafide purchasers of suit properties the agreement of sell is in favour of plaintiffs binding upon them.

8. In the light of aforesaid submissions following substantial questions of law arise for determination.

(i) Whether the Courts below have committed error in deciding the validity of sale deed dated 30/01/2006, executed by defendant no. 1 in favour of defendants no. 2 to 5, contrary to the judgment of this Court in case of Sitaram cited supra ?

(ii) Whether the decision on validity of the aforesaid sale deed has bearing on the judgment and

decree passed by Courts below ?

9. Perusal of material pleadings and evidence on record reveal that there is no dispute about the fact that defendants no. 1 and 6 to 13 are tenants of Gat No. 55 and 56 and that provisions of Hyderabad Agricultural and Tenancy Act, 1950 (for short 'Act'), have application to this case. Record further indicates that defendants no. 1 and 6 to 13 executed agreement to sell and that it was agreed by them to execute sale deed in respect of 1/2 portion of the suit lands. Plaintiffs by leading cogent evidence has also proved the payment of consideration as agreed between the parties. Thus practically nothing remained for plaintiffs to perform any obligation under the contract. In view of these proved facts, there would not be any impediment to decree suit for specific performance of contract.

10. No doubt, it would be open for these defendants to challenge the same on the ground of failure on the part of the plaintiff to show readiness and willingness to perform their part of the contract as predominantly it is obligation of the Court to ensure that before grant of specific performance the plaintiff pleads and proves his readiness and willingness. In the peculiar facts of the case, the said issue does not survive for determination.

11. Here in this case, admittedly, defendant no. 1 has executed sale deed dated 30.01.2006 (Exh. 107) in favour of defendants no. 2 to 5, to the extent of 8 H 60 R land from Gat Nos. 55 and 56. On the basis of this transaction, these defendants seek to oppose grant of decree in favour of plaintiffs. Learned Trial Court, relying upon provisions of Act, has held that for want of prior sanction the sale deed (Exh. 107) is null and void.

12. Perusal of the judgment of this Court relied upon by counsel for appellants / defendants no. 2 to 5 in case of *Sitaram* (supra), shows that it deals with the issue as to whether it would be open for Civil Court to decide the legality and validity of a sale deed purportedly executed in non compliance of provisions of Section 50 B (2) of Hyderabad Agricultural Tenancy Act. It is held therein that even for want of sanction of the Collector, the transfer is not null and void but in view of Sub Section 2 of Section 50 B, it will be invalid. It is further held that in view of provisions of Section 98 C, 99 and 99 - A of the Tenancy Act, Civil Court will have no jurisdiction to settle, decide or deal with any question which is required to be dealt with under the tenancy Act. It is finally held that the validity of the sale deed cannot be gone into by the Civil Court and the issue could be decided by the tenancy authority in view of the provisions of the said

Act. There cannot be any dispute about the proposition of law laid down in the said judgment. Having regard to the provisions of Section 98 C, 99 and 99 A of the Act, question of determination of validity of the transaction in respect of the land covered by the said Act would lie with the tenancy authority. Thus, the findings recorded by Trial Court as well as the First Appellate Court with regard to the validity of sale deed cannot sustain and deserves to be set aside.

13. Even after having held so, the question arises as to whether the validity or otherwise of the sale deed between defendant no. 1 and appellants would affect the claim of plaintiff about specific performance of contract. In this regard, it would be relevant to take note of Section 19 of Specific Relief Act, which reads thus :

“19. Relief against parties and persons claiming under them by subsequent title. – Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against--

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) xxxxx

(d) xxxxx

(e) when the promoters of a company have, before

its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

14. The aforesaid provision shows that a specific performance of contract may be enforced against either party thereto or any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid a money in good faith and without notice of original contract. Thus in view of the said provision the burden lies on defendants no. 2 to 5 (purchasers) to show that they are bonafide purchasers of the suit property without notice of the previous contract. In this regard, it is the contention of the appellant that the plaintiff was signatory to the agreement to sale executed by defendant no. 1 in favour of appellants herein which indicates that plaintiffs have waived their right in favour of these defendants. These defendants, however, have failed to place on record before Trial Court the said document in order to substantiate their contentions in this regard.

15. In this regard, an application was moved under Order XLI Rule 27 of Civil Procedure Code (for short ‘CPC’) before the First

Appellate Court, which came to be turned down with the observations that the appellants have failed to show any due diligence. In this context, learned counsel for the appellant submitted that having regard to the provisions of Order XLI Rule 27 of CPC, the additional evidence should be allowed, as the agreement to sale in favour of these defendants is relevant for the purpose of decision of case. It is submitted that the First Appellate Court has committed error in not considering the fact that the agreement to sale sought to be produced on record is covered by clause 'B' of Order XLI Rule 27 (1) of CPC.

16. In order to appreciate the said submission the relevant provision of Order XLI Rule 27 of CPC, needs to be considered which reads thus :

**“ Order XLI – Appeals from original decrees –**  
**27. Production of additional evidence in**  
**Appellate Court.** – (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—  
(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or  
(aa) the party seeking to produce additional evidence, establishes that notwithstanding the

exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the Court shall record the reason for its admission.”

17. The said provision begins with negative statement that the parties to an appeal shall not be entitled to produce additional evidence whether oral and documentary and then, it proceeds to lay down circumstances for acceptance thereto. Admittedly, Clause ‘A’ has no application to the present case. Clause ‘AA’ permits the party to produce additional evidence provided that it establishes that there was exercise of due diligence or that such evidence was not within his knowledge or could not be produced when the decree appeal was passed. In this regard as rightly held by the First Appellate Court, the appellants have failed to show exercise of due diligence for not

producing the agreement to sale on record at the time of passing of the impugned decree. In absence of proof of due diligence, the appellants herein were not entitled to place additional evidence before the First Appellate Court.

18. As regards the contention that in view of clause 'B' the additional evidence ought to have been allowed to be placed on record is misconceived, as the said provision is enabling provision to the Court, if it requires any documents to be produced or any witness to be examined to enable it to pronounce judgment. This does not mean that Court shall permit a party to fill in lacuna in the existing evidence. Having regard to the nature of provision of Order XLI Rule 27 of CPC, and embargo on the parties to an appeal to produce additional evidence, clause 'B' cannot be read to permit party to produce additional evidence on the ground that according to him document is relevant for the decision of the case. Any such interpretation would frustrate the aim and intent of the relevant provision of Order 41 Rule 27 of CPC. It may amount granting license to the parties, to place any evidence on record at any stage. Similarly defendants no. 2 to 5 have failed to show any substantial cause for permitting additional evidence. This Court, therefore, finds no perversity in the rejection of application under Order XLI Rule 27 of CPC.

19. Since the burden is on the subsequent purchaser to show that the suit property is purchased for value and for good faith and without notice of original contract and since it is a case of appellants / defendants no. 2 to 5 that the plaintiff was signatory to the agreement to sale, it was incumbent on their part to prove said contention by producing convincing evidence. In absence of production of agreement to sale on record, it cannot be held that the plaintiff was a party to the said agreement to sale. Consequently, it cannot be held that defendants no. 2 to 5 are bonafide purchasers of the part of suit land for value.

20. At this stage, it would be relevant to take note of the judgment of Hon'ble Apex Court in case of *Lala Durga Prasad and another Versus Lala Deep Chand and others*, **AIR 1954 SC 75**, wherein, it is held that it is not necessary for the vendee in case of a suit for specific performance of contract to seek the declaration that the subsequent transfer of the suit property is not binding upon him. It is held that even without doing so, it is open for the vendee to seek direction to vendor as well as the subsequent purchaser to join in the conveyance to be executed in his favour. In view of the said judgment and the position of law, it is clear that the declaration of the sale deed as illegal, void, etc. is not a *sine quo non* for maintaining the suit for specific performance.

21. Once the plaintiff has proved the execution of agreement to sale by vendor in his favour which is prior in time to the transfer of the property in favour of third party and after establishing the readiness and willingness to perform his part of the contract, there cannot be any reason or justification to refuse decree of specific performance. The findings recorded of the Trial Court as well as First Appellate Court regarding the validity or otherwise of sale deed between appellants and defendant no. 1 is, therefore, are of no consequence. Even ignoring the said findings recorded by both Courts, the decree of specific performance granted cannot be interfered with. Substantial questions of law are therefore answered accordingly.

22. It is also sought to be contended that the agreement to sale in respect of half portion of the suit property but the Trial Court has wrongly granted specific performance in respect of the entire suit property and which is further confirmed by First Appellate court. In this regard, if the plaint is perused it is clearly stated therein that the suit property is half portion of Gat Nos. 55 and 56. The said fact is also supported by the permission granted by the tenancy authority for the sale of the suit property in favour of plaintiff which is also only to the extent of half portion of Gat No. 56 which was valid for period of two months. Thus, it cannot be construed that the decree has been

passed in respect of the entire Gat Nos. 55 and 56.

23. As far as grant of injunction in favour of plaintiffs is concerned, undisputedly plaintiffs are in possession of suit lands whether in their individual capacity or as constituted attorney of defendants no. 1 and 6 to 11. It is therefore not open for any one to interfere into the settled possession of plaintiffs over it. The learned Trial Court therefore has rightly restrained defendants from interfering in possession of suit lands without due process of law. The order of injunction is not unqualified. It may be open for the defendants to seek possession thereof if provided by law and in accordance with law. Thus on this Count also no case is made out for interference therein.

24. In the light of these aforesaid discussion and in the facts and circumstances of the case, there is no reason or jurisdiction for causing interference in the impugned judgment and decree. In the result, the appeal stands disposed of in following terms :

- i. Special C.S. No. 14 of 2006 is partly decreed.
- ii. Declaration in respect of sale deed dated 30/01/2006 executed by defendant no. 1 in favour of defendants no. 2 to 5 is hereby quashed and set aside.

iii. Rest of the operative part of judgment to remain unaltered.

**[ R.M. JOSHI, J. ]**

SPChauhan