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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.477 OF 2018
WITH
CIVIL APPLICATION NO.890 OF 2018
IN
SECOND APPEAL NO.477 OF 2018**

Pandurang Jagannath Ghavane	...Appellant/Applicant
Versus	
Sanjay Shankarrao Mali	...Respondent

- Mr. Shriram S. Chaudhari, for the Appellant/Applicant.
- Mr. Shashank Mangle i/b. Mr. Satish Raut a/w Mr. Abddul Shaikh and Ms. Bhagyashri Ranade, for the Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATE : 14th MARCH 2023

P.C. :

1. Heard Mr. Chaudhari, learned counsel appearing for the Appellant and Mr. Shashank Mangle, learned counsel appearing for the Respondent.
2. The Appellant by the present Second Appeal is challenging the legality and validity of the judgment and decree dated 31st August 2013 passed by the learned Joint Civil Judge, Junior Division, Pandharpur in Reg. Civil Suit No.129 of 2011 as well as challenging

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the legality and validity of the Judgment and Decree dated 20th March 2017 passed by the learned Adhoc District Judge-I, Pandharpur at Pandharpur in Reg. Civil Appeal No.151 of 2013.

3. Mr. Chaudhari, learned counsel appearing for the Appellant submitted that the following substantial questions of law are involved in the present Second Appeal:-

- (I) Whether the findings of the Courts below that the Plaintiff proved that father and uncle of the Appellant had executed an Agreement to sale in favour of deceased father of the Plaintiff is in accordance with the evidence on record?
- (II) Whether decree for specific performance can be granted against the Appellant-Original Defendant who is the owner and in possession of the suit property and who was not party to the alleged Agreement for Sale allegedly executed between the father of the Appellant and father of the Respondent-Plaintiff?
- (III) Whether the findings of the Courts below that the Respondent-Plaintiff proved the registered Agreement for Sale dated 02-12-1994 is contrary to the evidence on record and therefore perverse?
- (IV) Whether the Courts below failed to consider the provisions of Section 20 (2)(C) while granting Specific performance of the alleged Agreement for Sale?

4. Mr. Shashank Mangle, learned Counsel appearing for the Respondent pointed out various aspects and submitted that the

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Second Appeal be dismissed.

5. Before considering the substantial questions of law raised by the learned counsel of the Appellant, it is necessary to set out certain factual aspects:-

- i. The suit property admeasures 2 H 76 R and is an agricultural land belonging to the father of the present Appellant.
 - ii. The father of the present Respondent entered into a registered agreement of sale dated 2nd December 1994 with father of the present Appellant and agreed to purchase the suit land for total consideration of Rs.2,52,000/- from the father of the present Appellant. At the time of execution of said registered agreement dated 2nd December 1994, an amount of Rs.2,00,000/- was paid and balance amount of Rs.52,000/- was agreed to be paid at the time of execution of the sale deed as permission from the Commissioner was required for the said transaction.
 - iii. It is further significant to note that the said registered agreement dated 2nd December 1994 (Exh.19) bears signature of the Appellant in his capacity as witness to the said document.
6. It is significant to note that the Appellant has raised contention that the said document is merely Power of Attorney and not agreement of sale and his signature has been taken on the said

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document without informing him about the nature of the document. Both the learned Trial Court as well as the learned First Appellate Court have disbelieved the said case of the Appellant and held that said registered agreement dated 2nd December 1994 was executed by father of the Appellant in favour of the father of the Respondent and the said document is executed in his capacity as witness by the present Appellant.

7. It appears that the Appellant's father failed to obtain permission during his lifetime. Thereafter, by G.R. dated 17th January 2010 requirement of obtaining permission was cancelled and therefore, for the said transaction of transfer, permission was not required. Therefore, immediately on 27th January 2010, a sale deed was prepared wherein the Respondent agreed to pay consideration of Rs.9,50,000/-. It is further significant to note that the said sale deed was executed by about 18 co-owners and remaining co-owners have executed the sale deeds on 2nd February 2010 and 13th May 2010. It is significant to note that the said registered sale deed dated 27th January 2010 bears the signature of the Appellant, however, the Appellant although attended the registration office, he refused to accept the execution of the document and left the office along with

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his sisters.

8. It appears that the said document dated 2nd December 1994 was also executed by the uncles of the present Appellant and therefore, finding is recorded by both the Courts that the father and uncles of defendant i.e. Appellant agreed to sell the suit property to the father of the Respondent.

9. It is also admitted position that the sisters of the Appellant have thereafter executed the registered sale deed in favour of the present Respondent. The said sale deed which has been admittedly executed by the present Appellant mentions that the Appellant *inter alia* has accepted the consideration of Rs.9,50,000/- with other co-owners at the residence and that the possession of the suit property has been handed over to the Respondent. Therefore, it is clear that the entire consideration of said Rs.9,50,000/- has been paid.

10. On the basis of the contents of said registered sale deed dated 27th January 2010 as well as on the basis of evidence on record, both the learned Courts have concurrently held that the Appellant i.e. the defendant has accepted the consideration and thereafter only he has executed the sale deed but refused to accept the execution before the registering authority. Therefore, both the Courts have concurrently

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held that the said agreement of sale dated 2nd December 1994 executed by father of the Appellant in favour of father of the Respondent is admitted and on the basis of the registered sale deed dated 27th January 2010 as well as other sale deeds dated 2nd February 2010 and 13th May 2012, the finding that 24 co-owners out of 25 co-owners have sold the suit property in favour of the Respondent and present Appellant who has got only 1/25th share has executed the registered agreement dated 2nd December 1994 in his capacity as witness and executed the sale deed dated 27th January 2010 as well as accepted the consideration, however, refused to accept the execution before the Registrar as he has left the office of the Sub-Registrar granted suit for specific performance.

11. As far as the contention regarding Section 20(2)(c) of the Specific Relief Act, it is significant to note that the said provision specifies that where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance, in such case, the Court may exercise the discretion to decree specific performance. In fact, in this particular case, it is admitted position that out of 25 co-owners, 24 co-owners, except the present Appellant, have executed

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the sale deed in favour of the present Respondent. Both the Courts have recorded concurrent findings that present Appellant has executed said sale deed dated 27th January 2010, however, refused to admit the execution before the Sub-Registrar. However, 18 co-owners accepted execution and sale deed was registered. Said registered sale deed specifically mentions that the total consideration of Rs.9,50,000/- has been paid to all the co-owners. Therefore, it is clear that the Appellant has received the consideration. Thus, it cannot be held that it is inequitable to enforce specific performance of contract.

12. In view of the concurrent findings recorded by both the Court and for the above reasons, there is no substance in any of the substantial questions of law raised by the Appellant.

13. Accordingly, the Second Appeal is dismissed with costs. In view of dismissal of Second Appeal, nothing survives in the Civil Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]