



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

**SECOND APPEAL NO. 221 OF 2024
WITH
CIVIL APPLICATION NO. 1881 OF 2024**

1. Balaji Sidhanna Malgirwar (Died)
Through his L.Rs.
- 2/1. Shardabai W/o Balaji Malgirwar @
Parvatibai W/o Balaji Malgirwar,
Age : 44 Years, Occ. Household,
R/o. Gokulnagar, Degloor, Tq.
Degloor, District Nanded.
Name of wife of Balaji Malgirwar
has been shown as Shardabai by
original plaintiff while filing the application
for bringing on record the L.Rs. of
deceased Balaji. Actually, correct name
of wife of deceased Balaji is Parvatibai
W/o Balaji Malgirwar, hence the same
is shown in present title cause.
- 2/2. Sharda D/o Balaji Malgirwar,
Age : 26 Years, Occ. Household,
R/o. As above.
- 2/3. Shyam S/o Balaji Malgirwar,
Age : 24 years, Occ. Education,
R/o. Gokulnagar, Degloor, Tq.
Degloor, District Nanded.
- 2/4. Bhaiya S/o Balaji Malgirwar @
Sharad S/o Balaji Malgirwar,
Age : 21 Years, Occ. Education,
R/o. Gokulnagar, Degloor, Tq.
Degloor, District Nanded.

Name of son of Balaji Malgirwar has been
shown as Bhaiya by original plaintiff
while filing the application for bringing
on record the L.Rs. Of deceased Balaji.
Actually, correct name of son of deceased
Balaji is Sharad S/o Balaji Malgirwar,
hence, the same is shown in present
title cause.

..Appellants.

(Ori. Def. Nos.2/1
to 2/4)

VERSUS

1. Laxman S/o Gangaram Desai,
Age : 54 Years, Occ. Agriculture,
R/o. Deshpande Galli, Degloor,
Tq. Degloor 10 pt, District Nanded.

2. Mohd. Gous S/o Lal Saheb
Age : 39 Years, Occ. Business,
R/o. Pethamrapur, Degloor,
Tq. Degloor, District Nanded.

.. Respondents
(Respondent No.1 Ori.
Plaintiff and Res. No.
2 is Ori. Deft No.1)

....

Shri. Kalyan V. Patil, Advocate for the Appellants.
Shri. G.K. Naik Thigle, Advocate for Respondent No.1
Shri. C.V. Korhalkar, Advocate for Respondent No.2.

....

CORAM : SANDIPKUMAR C. MORE, J.
DATED : September 9, 2024.

ORDER :

1. Heard rival submissions on admission.
2. The present Second Appeal is directed against the impugned judgment and order dated 03.07.2023, passed in Regular Civil Appeal No. 6 of 2019 by the learned District Judge-I, Biloli i.e. the learned First Appellate Court, whereby the judgment and decree dated 19.12.2018 in Regular Civil Suit No. 181 of 2009 passed by the learned Jt. Civil Judge, Junior Division, Degloor i.e. the learned trial Court, is reversed.
3. The backgrounds facts are as under :-

The respondent No.1/plaintiff has filed Regular Civil Suit No. 181 of 2009 for specific performance of agreement of sale dated 04.04.2007, whereby respondent No.2 i.e. original defendant No.1 had agreed to sell the suit plot No.5 out of Gut No. 40 at Degloor to the plaintiff for the consideration of Rs. 67,500/-. Respondent No.1/plaintiff had paid an earnest amount of Rs.10,000/- to defendant No.1 at the time of agreement to sale. It was agreed between the plaintiff and defendant No.1 that the sale deed was to be executed as and when it would be required by the plaintiff and after layout plan is sanctioned. Then respondent No.1/plaintiff arranged the remaining amount of consideration of Rs. 57,500/- and requested defendant No.1 to execute the sale of the suit plot. However, defendant no.1 did not act accordingly and therefore, on 27.07.2009, the plaintiff had issued notice to him calling upon him to execute the sale deed. Thereafter, on 05.08.2009 also the plaintiff made request to defendant No.1 to execute the sale-deed, but defendant No.1 instead of executing the sale deed, told him that he had already sold the suit plot to defendant No.2. Therefore, respondent No.1/plaintiff was constrained to file the aforesaid suit for specific performance and cancellation of sale deed executed by defendant No.1 in favour of original defendant No.2 who is the predecessor-in-

title of the present appellants. After adducing the evidence the learned trial Court, dismissed the suit of the plaintiff only on the ground that original defendant No.2 was the bonafide purchaser.

4. Feeling aggrieved with the said decision of the learned trial Court, respondent No.1/plaintiff preferred an appeal before the learned First Appellate Court, who under the impugned judgment and order, held that original defendant No.2 failed to establish the fact of being bona fide purchaser and allowed the suit of respondent No.1/plaintiff. Hence, this appeal.

5. The learned counsel for the appellants submits that the learned First Appellate Court definitely erred in allowing the suit of respondent No.1/plaintiff. According to him, a suit seeking for declaration of title of ownership when the possession is not sought, is hit by proviso of Section 34 of the Specific Relief Act, 1963 and thus the suit is not maintainable. He claimed that original defendant No.2 was bonafide purchaser of the suit plot and it was rightly observed by the learned trial Court. He also relied on the judgment of Jharkhand High Court in the case of **Smt. Ambika Devi Versus Smt. Sita Devi, in (Second Appeal) No. 193 of 2012**

dated 14.12.2023.

6. On the contrary, the learned counsel for respondent No.1/plaintiff supported the observations of learned First Appellate Court holding that the original defendant No.2 could not discharge the burden of proving himself as bonafide purchaser of the suit plot. According to him, Section 34 of the Specific Relief Act is not applicable to the present matter. He also relied on the judgment in the case of **R.K. Mohammed Ubaidullah and Others Vs/ Hajee C. Abdul Waheb (D) by Legal representatives (2000 (60 SCC 402)**

7. On the other hand, the learned counsel for respondent No.2 i.e. defendant No.1 submitted that the suit is not maintainable as the plaintiff cannot be considered as an aggrieved person, since the learned trial Court has already granted alternate relief in his favour i.e. of refund of money. For that purpose, he relied on the judgment in the case of **U.G. Srinivasa Rao Vs. Vinaykumar S. Rao & Others.AIR 2004 Karnataka 450)**

8. Heard rival submissions and also perused the impugned judgments along with the judgments relied upon by the learned counsel for the rival parties.

9. It is significant to note that the learned trial Court has answered all the issues for granting specific performance, in favour of respondent No.1/plaintiff, but only granted the alternate relief of refund of earnest money by holding original defendant No.2 as bona fide purchaser of the suit plot. However, the learned First Appellate Court reversed the said findings of the learned trial Court and held that original defendant No.2 could not discharge the burden of proving him as bona fide purchaser of the suit plot. For this purpose, the learned First Appellate Court has observed that the burden of proving the fact of being bona fide purchaser was upon defendant No.2 and therefore, the observations of the learned trial Court that respondent No.1/plaintiff could not adduce any evidence to show that defendant No.2 has knowledge of existence of agreement to sale (Exh.54), is perverse. Further, it is evident that the learned First Appellate Court has also observed that there was no cross-examination of the plaintiff on the point that defendant No.2 was having knowledge about the transaction between himself and defendant No.1. The observation of the Hon'ble Apex Court in the case of **R.K. Mohammed Ubaidullah And others Vs. Hajee C. Abdul Wahab (D) by legal representatives** is that the onus of proof of good faith is always upon purchaser who takes the plea

that he is an innocent purchaser.

10. In the instant case also, original defendant No.2 had taken plea or defence that he was bona fide purchaser for the value without notice. Therefore, under such circumstances it was defendant No.2, who was under obligation to establish the said fact. Admittedly, there is no evidence on record to show that defendant No.2 had made proper inquiry before purchasing the suit plot. As such, the observation of learned First Appellate Court that defendant No.2 could not establish the fact that he was bona fide purchaser of the suit plot, appears proper. Even otherwise also, the learned trial Court has answered all the issues which are necessary for granting specific performance of the contract, in favour of respondent No.1/plaintiff, such as, ready and willingness, execution of agreement of sale and payment of consideration. That apart from the execution of the agreement of sale was admitted by defendant No.1, but he came with defence that in fact the agreement was in respect of plot No.4 which was already sold to wife of respondent No.1/plaintiff. However, this fact also could not be established by defendant No.1.

11. Further, the learned counsel for respondent No.2 i.e.

defendant No.1 raised objection by quoting Section 34 of the Specific Relief Act. According to him, the present suit is not maintainable since the plaintiff cannot be termed as “aggrieved person” as the learned trial Court has already granted alternate relief of refund of money in his favour. He relied on the judgment of **Karnataka High Court in the case of U.G. Srinivasa Rao Vs. Vinaykumar S. Rao and others AIR 2004 Karnataka 450** wherein it is held that when the alternative relief for refund of money has been granted in favour of plaintiff, his appeal for other reliefs was not maintainable as he could not be considered as person aggrieved. He also relied on the case of **Sakku Bai Ammal Vs. R. Babu Reddiar and others AIR 1977 Madras 223** (supra) from Madras High Court wherein it is observed that when plaintiff is securing one of the two alternative reliefs, the appeal seeking other relief is not maintainable. However, on going through both these judgments, it is evident that it is in respect of grant of one of the two or more alternate reliefs claimed. In the instant matter, no prayer is there for grant of more than one alternate reliefs. Therefore, the observations of the aforesaid cases are not helpful to respondent No.2.

12. Further, the learned counsel for the appellants also

placed reliance on the observations of Jharkhand High Court in the case of **Smt. Ambika Devi Vs. Sita Devi (supra)** wherein it is observed that it is not permissible to claim the relief of declaration without seeking consequential relief. After going through the said judgment, it is clearly evident that the concerned High Court held that the suit is not maintainable wherein no relief of possession was sought while claiming declaration about ownership. However, in the instant case, though the declaration for claiming sale deed in between defendant No.1 and 2 being void and illegal, is claimed by not claiming the possession, but it is equally important to note that the relief for specific performance is already sought by the plaintiff which includes the ancillary relief of handing over possession on execution of sale deed. The learned First Appellate Court has already granted specific performance in favour of the plaintiff by directing both the defendants to execute the sale deed of the suit plot in his favour. As such, the aforesaid observation is also not helpful to the appellants.

13. Considering all these facts, there is no substantial question of law as raised by the appellants and respondent No.2 in view of Section 34 of Specific Relief Act, is involved in this matter and therefore, there appears no substance in the

present Second Appeal and thus, it sands dismissed at admission stage along with pending Civil Application No. 1881 of 2024 and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

Y.S.Kulkarni/