



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

**SECOND APPEAL NO.446 OF 2024
WITH
CIVIL APPLICATION NO.13857 OF 2024
IN
SECOND APPEAL NO.446 OF 2024**

1. Sujit Namdeo Shinde
Age- 46 Years, Occ- Agri/Business
2. Namdeo Govind Shinde,
Age- 84 Years, Occ- Agri/Pensioner
3. Sau. Vijaya Namdeo Shinde,
Age- 72 Years, Occ- Agri.

All R/o. Ganesh Colony, Loni Khurd
Tal. Rahata, Dist. Ahmednagar

..Appellants
(Orig. Defendants)

Versus

Babanrao Vithoba Abuj
Age- 69 Years, Occ- Agri/Pensioner
R/o. Ganesh Colony, Loni Khurd,
Tal. Rahata, Dist. Ahmednagar.

..Respondent
(Orig. Plaintiff)

...
Mr. V. D. Hon, Senior Advocate i/by Mr. S. S. Kote, Advocate for
the Appellants.

Mr. A. S. Bajaj a/w Mr. H. A. Bajaj, Advocate for Respondent.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th DECEMBER, 2024.**

ORDER:-

1. The appellants / original defendants impugns judgment and decree dated 19.10.2024, passed by District Judge-1, Sangamner, Dist. Ahmednagar in Regular Civil Appeal No.104/2018, thereby reversing judgment and decree dated 10.10.2018 passed by Civil

Judge, Senior Division, Sangamner in Special Civil Suit No.22/2012. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent/plaintiff instituted a suit for specific performance of a contract based on agreement to sale dated 22.09.2008, contending that the defendants are owners of agricultural land admeasuring 1H 49R situated at Gut No.455/3. The defendants executed a notarized agreement to sale after receiving an earnest amount of Rs.10,00,000/- and agreed to sale suit land to plaintiff for total consideration of Rs.17,20,000/-. It was agreed that sale deed would be executed after disposal of pending court litigation concerning the suit property. According to plaintiff, he was always ready and willing to perform his part of the contract and pay balance consideration of Rs.7,20,000/- to the defendants. However, the defendants refused to execute the sale deed. Consequently, plaintiff issued a legal notice dated 20.04.2012, calling upon the defendants to remain present in registrars office 03.05.2012 and execute sale deed. Plaintiff was present in office of Sub-Registrar, Sangamner, on given date but defendants did not turn up. Hence, the cause of action arose to file suit. The plaintiff specifically pleaded essentials of Section 16(c) of the Specific Relief Act in plaint. In the alternative, the plaintiff

claimed for refund of earnest amount of Rs.12,00,000/- along with interest at 18% per annum.

3. In response, the defendants refuted the plaintiff's claim, contending that defendant no.1 was facing financial duress, hence, sought financial assistance from plaintiff. The plaintiff advanced Rs.10,00,000/- upon execution of the agreement to sale, which was intended for collateral security towards repayment of loan. The defendants offered to refund Rs.10,00,000/-, but the plaintiff declined to accept it and raised a false claim.

4. The Trial Court framed issues, both parties recorded witness testimonies so also relied on documentary evidence. Finally Trial Court concluded that plaintiff failed to prove agreement to sale or payment of earnest money to the defendants. Additionally, the plaintiff failed to prove his readiness and willingness to perform his part of the contract. Pertinently Trial Court also rejected defendants' case of hand loan transaction and concluded that suit was barred by limitation. Consequently, the suit was dismissed. Aggrieved, plaintiff filed an appeal before the District Court. The learned District Judge reversed the judgment and decree of the Trial Court, upholding plaintiff's claim for specific performance of contract based on agreement to sale dated 22.09.2008 and the payment of earnest money. The Appellate Court found that the suit was within the limitation period and recorded positive finding on

point of plaintiff's readiness and willingness to perform his part of the contract. Consequently, the suit has been decreed, directing the defendants to execute the sale deed in favor of the plaintiff upon the deposit of Rs.5,20,000/- alongwith interest at 6% per annum from the date of filing of the suit until the deposit of the amount.

5. Mr. V. D. Hon, learned Senior Advocate appearing for the defendants, submits that Trial Court, upon proper appreciation of evidence, rightly dismissed the plaintiff's suit. However, the Appellate Court erroneously reversed the decree. According to Mr. Hon, the plaintiff failed to prove his readiness and willingness to perform his part of the contract, and no consideration was transferred to the defendants under the agreement to sale. He points out that payment was made by Dr. Ashok Tambe from his account and another payment of Rs.2,00,000/- was made through account of Asmita Dairy. Therefore, plaintiff cannot claim specific performance based on payments made by third parties. Mr. Hon further argued that Trial Court rightly held that suit was barred by limitation. Hence, Second Appeal deserves to be admitted by framing substantial questions of law on these issues.

6. Per contra, Mr. Bajaj, learned Advocate appearing for respondent, submits that defendants admitted execution of agreement to sale dated 22.09.2008 but took an inconsistent stand that transaction was that of hand loan. The defendants claimed

that plaintiff advanced a sum of Rs.10,00,000/- to them upon execution of document dated 22.09.2008 as security for loan. Mr. Bajaj further submits that, as per Clause No.2 of the agreement to sale, sale deed was to be executed immediately after decision of Regular Civil Suit No.80/2006 pending before the Civil Judge, Senior Division, Sangamner, and RTS Appeal No.40/2006 pending before the District Collector at Ahmednagar. The RTS Appeal No.40/2006 was decided earlier in favor of the defendants, however Regular Civil Suit No.80/2006 was disposed of on 21.09.2010. Thereafter, on demanded of defendants, a sum of Rs.2,00,000/- was paid on 11.04.2011. Thereafter also plaintiff was ready to pay the balance amount of Rs.5,20,000/-. On 05.02.2012, plaintiff's son-in-law, Dr. Ashok Tambe, passed away. Consequently, in April 2012, plaintiff again requested defendants to execute sale deed, but due quoting personal difficulties, defendants delayed execution of the sale deed. Finally, plaintiff issued a notice dated 20.04.2012 to the defendants for executing the sale deed. On 03.05.2012, the plaintiff was present in the office of the Sub-Registrar with the balance amount, but the defendants did not appear. According to Mr. Bajaj, the Trial Court had dismissed suit on untenable grounds, whereas Appellate Court rightly reversed decree. No substantial question of law arises for consideration in this Second Appeal.

7. Having considered submissions advanced by the learned Advocates appearing for the respective parties and after going through reasoning adopted by Courts below, it can be observed that execution of agreement to sale dated 22.09.2008 is undisputed. There is no denial that the amount stipulated as earnest money in the agreement was received by the defendants. In fact out of the total consideration of Rs.17,20,000/-, amount of Rs.5,00,000/- was paid through cheque and Rs.5,00,000/- was paid in cash. Balance of Rs.7,20,000/- was to be paid at the time of execution of sale deed. Although defendant No. 1 pleads that agreement to sale was executed towards security for loan, he utterly failed to support this contention by leading cogent evidence. Both Courts have concurrently held that defendants failed to establish defence of loan transaction. In that view of the matter it will have to be accepted that defendants executed agreement to sale in favor of plaintiff and received Rs.10,00,000/- as earnest money.

8. The Trial Court discarded plaintiffs case only on ground that consideration has been paid by Dr. Tambe. Undisputedly, Dr. Tambe is plaintiff's son-in-law. The defendant readily accepted cheques drawn on Dr. Tambe's account and acknowledged receipt thereof in agreement. Now plaintiff cannot contend that the consideration amount paid under cheque drawn on Dr. Tambe's

account was not towards agreement to sale. In this backdrop, the finding of fact recorded by the Appellate Court, cannot be faulted.

9. The second contention raised on behalf of the defendants is that the plaintiff failed to prove his readiness and willingness to perform his part of the contract. Section 16(c) of the Specific Relief Act mandates that the plaintiff must aver and prove his readiness and willingness to perform his part of the contract when seeking specific performance. The Supreme Court of India in case of ***U. N. Krishnamurthy (Since Deceased) Thr. LRs. Vs. A. M. Krishnamurthy***¹, observed in paragraph nos.24 and 25 as under:

“24. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in Court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.

25. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to

¹ (2023) 11 SCC 775.

specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.”

10. Therefore, question is whether plaintiff complied with aforementioned requirements. In paragraphs 5 and 6 of the plaint, the plaintiff specifically averred that he was always ready and willing to perform his part of the contract. The plaintiff stated that the sale deed was to be executed upon the disposal of the pending civil cases referred to in the agreement. The RTS Appeal No.40/2006 was decided in favor of the defendants. Thereafter, on 21.09.2010, Regular Civil Suit No.80/2006 was withdrawn by the defendants. As such, impediments to execution of sale deed were removed. On 11.04.2011, the plaintiff's son-in-law Dr. Tambe paid Rs.2,00,000/- to defendant no.1 through a cheque, and the plaintiff was ready with the balance consideration amount of Rs.5,20,000/-. Unfortunately, Dr. Tambe passed away on 05.02.2012. The plaintiff's family was in grief. In April 2012, plaintiff offered balance consideration amount, but defendants avoided execution of sale deed. Consequently, a legal notice was issued on 20.04.2012 calling upon the defendants to execute sale deed. The plaintiff remained present in the office of Sub-Registrar on 03.05.2012 for that purpose, but defendants failed to turn up. From pleadings in plaint and legal notice dated 20.04.2012, it is clear that plaintiff

was always ready and willing to perform his part of the contract, while defendants avoided execution of sale deed. The defendants did not claim that the plaintiff lacked funds or unwilling to carry forward transaction. In fact, their defence was entirely different, attributing the transaction to a loan security, which they could not prove. Therefore, the requirements of Section 16(c) of the Specific Relief Act are clearly satisfied through plaintiff, legal notice and oral evidence of plaintiff.

11. Mr. Hon, learned Senior Advocate, contends that payment of Rs.2,00,000/- was not related to present transaction and that cheque was issued from account of Asmita Dairy. However, it is undisputed that Dr. Tambe was partner of said firm and signatory on of cheque. Pertinently defendants have not provided details of any other transaction with Asmita Dairy. Therefore, reasonable and logical inference is that payment of Rs.2,00,000/- was pursuant to the agreement to sale.

12. The third contention raised by Mr. Hon, Senior Advocate, is that the suit is barred by limitation. The Trial Court held that suit was barred by limitation on observing that agreement to sale was executed in 2008 and that plaintiff failed to prove the payment of Rs.2,00,000/- on 11.04.2011 pursuant to the agreement. As discussed above, payment of Rs.2,00,000/- was made from the account of Asmita Dairy, in which Dr. Tambe, plaintiff's son-in-law,

was a partner. Even cheques tendered at the time of the agreement to sale were drawn from his account. Therefore, there is no reason to disbelieve plaintiff's claim that this payment was in deference to agreement to sale. Furthermore, under Article 54 of the Limitation Act, limitation period of three years begins from date fixed for executing sale deed or from the date when performance of contract is refused to the notice of plaintiff. In this case, agreement stipulates sale deed would be executed on settlement of pending civil cases pertaining to suit land. Regular Civil Suit No.80/2006 was withdrawn on 21.09.2010. The present suit has been instituted in 2012, i.e. within three years limitation period. Therefore, the contention that the suit is barred by limitation has no merit.

13. The conclusions arrived at by the Appellate Court are based on a correct appreciation of the material on record. No substantial question of law arises for consideration in this Second Appeal.

14. Consequently, Second Appeal stands dismissed.

15. In view of dismissal of Second Appeal, Civil Application does not survive and accordingly stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE