



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH

**SECOND APPEAL NO. 79 OF 2017**

Mahadeo s/o Narayan Lende,  
Since deceased through Legal Representative  
Keshav s/o Mahadeo Lende,  
aged about 62 years, Occ. Cultivation,  
R/o Ambedkar Ward,  
Village and Post – Thana (Petrol Pump),  
Tah. and District – Bhandara (M.S.).

...APPELLANT

**Versus**

Purshottam s/o Narayan Ramteke,  
aged about 54 years, Occ. Business,  
R/o Ambedkar Ward, Bhandara – 441904,  
Post, Tahsil and District – Bhandara.

...RESPONDENT

Shri V.D. Muley, Counsel for the appellant.  
Shri K.K. Gour with Shri Y.B. Mandpe, Counsel for the respondent.

**CORAM : ANIL L. PANSARE, J.**

**ARGUMENTS WERE HEARD ON : APRIL 23, 2024**

**JUDGMENT IS PRONOUNCED ON : APRIL 30, 2024**

**JUDGMENT :**

The appeal has been admitted on the following  
substantial questions of law :

*“1) Whether in view of the material on record, the  
Courts below ought to have held that the agreement  
dated 13.7.2005 is shrouded with suspicious*

*circumstances, which have not been dispelled by the plaintiff ?*

*2) Whether the appellate Court erred in not permitting the defendant to amend the written statement ?*

*3) Whether the decree of specific performance results in undue hardship to the defendant ?”*

2] The appellant is the original defendant and the respondent is the original plaintiff. They will be hereinafter referred to as per their nomenclature before the trial Court.

3] The plaintiff filed suit for specific performance of contract against the defendant stating therein that on 6/7/2005, the defendant and his wife entered into an agreement to sell the lands bearing Gat Nos. 179, 180, 181 and 182 situated at Mouza – Thana. The wife of defendant, thereafter, on 13/1/2006, executed sale deed, in favour of the plaintiff, of lands bearing Gat Nos. 181 and 182. In the meantime, on 13/7/2005, the plaintiff and the defendant entered into a fresh agreement in respect of lands bearing Gat Nos. 179 and 180 for a total consideration of Rs.4,00,000/-. The plaintiff paid Rs.1,00,000/- as earnest amount. There occurred certain dispute and, therefore, the plaintiff filed suit

for specific performance of contract.

4] The stand of the defendant, through written statement, was that his wife executed the sale deed under pressure of his son Devidas. He denied execution of agreement to sell. According to the defendant, his son Devidas, is addicted to liquor and is a close friend of the plaintiff. His son had taken signatures on two blank stamp papers on the pretext of taking loan. As stated earlier, the trial Court decreed the suit. The First Appellate Court dismissed the suit and in doing so, formulated points for determination and answered the same in the following manner :

| Sr. No. | Points                                                                                                                                                                                                                        | Findings |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 1)      | Whether the plaintiff proved that the defendant agreed to sell suit property to him for a consideration of Rs.4,00,000/- and entered into an agreement of sale on 13/7/2005 by accepting an earnest amount of Rs.1,00,000/- ? | Yes.     |
| 2)      | Whether the plaintiff proved that he was and is all along ready and willing to perform his part of the contract ?                                                                                                             | Yes.     |
| 3)      | Whether the defendant proved that his son Devidas obtained his signatures on two blank stamp papers worth Rs.100/-                                                                                                            |          |

|    |                                                                                                               |                               |
|----|---------------------------------------------------------------------------------------------------------------|-------------------------------|
|    | and his son in-collusion with plaintiff prepared false agreement of sale and thereby cheated him ?            | No.                           |
| 4) | Whether the agreement of sale dated 6/7/2005 would prevail over subsequent agreement dated 13/7/2005 ?        | No.                           |
| 5) | Whether the defendant has made out any ground to allow amend his written statement at appellate stage ?       | No.                           |
| 6) | Whether the defendant has made out any ground to allow him to adduce additional evidence at appellate stage ? | No.                           |
| 7) | Whether the judgment and decree passes by the learned trial court calls for any interference ?                | No.                           |
| 8) | What order ?                                                                                                  | Suit is dismissed with costs. |

5] The learned Counsel for the appellant argued, which was also his argument before the First Appellate Court, that the first agreement dated 6/7/2005 (Exh. 74) was in respect of four lands bearing Gat Nos. 179 to 182. The total consideration for these lands was Rs.12,50,000/-. He then submits that the subsequent agreement dated 13/7/2005 (Exh. 52) was in respect of two lands bearing Gat Nos. 181 and 182

showing consideration of Rs.4,00,000/- only. According to him, the sale deed executed by the appellant's wife, in respect of Gat Nos. 181 and 182, was for Rs.1,00,000/-. If these two lands were sold for Rs.1,00,000/-, the consideration amount for remaining two lands, i.e., Gat Nos. 179 and 180 ought to have been Rs.11,50,000/-. As against, the agreement (Exh. 52) dated 13/7/2005 indicates that the consideration amount is only Rs.4,00,000/-. According to him, no prudent man will sell the property for such reduced price. In that sense, he submits that the theory put forth by the defendant that his signatures were obtained on blank stamp papers by his own son, ought to have been accepted on preponderance of probability.

6] This theory has been rejected by the First Appellate Court and in my view has correctly done so. There is no cogent evidence, except for the bald statement that the appellant's son has obtained his signature on blank stamp papers. The appellant, in his cross-examination, admitted his signature. As could be seen, the first agreement is dated 6/7/2005. This agreement was executed by the appellant and his wife. The

appellant has no grievance as regards this agreement. The second agreement was executed within a week, i.e., on 13/7/2005. Why was that done is not clarified by both the sides. The appellant states that he came to know of the subsequent agreement sometime in the month of December, 2005, but has not disclosed the date. He lodged the report on 6/1/2006. Why did he take such a long time to lodge report is also not disclosed. If what the appellant states is correct that is his son has obtained signatures on blank stamp papers and those stamp papers were misused by the respondent, he ought to have promptly lodged report. He did not do so. More importantly, on 10/1/2006, i.e., within four days of lodging report, his wife has executed sale deed of lands bearing Gat Nos. 179 and 180 in favour of the respondent. The appellant has given no satisfactory answer as to if he came to know of misuse of stamp at the hands of the respondent in December, 2005 and when he lodged report on 6/1/2006, why has he not objected or how did he permit his wife to execute sale deed on 10/1/2006 of the two lands in favour of the plaintiff.

7]           Considering these facts, which includes admission of the appellant of his signatures on stamp papers, coupled with the unacceptable theory of misuse of stamp followed by his wife executing sale deed in favour of the plaintiff, the First Appellate Court has held that there is no merit in the defence taken by the appellant. The finding, in my view, is in tune with the evidence before the Court.

8]           Once it is held that the agreement under question was a valid agreement, the theory of inadequate consideration will be of no relevance inasmuch as the parties to the contract, i.e., the appellant and the defendant have both agreed for the said consideration. Why was consideration reduced is something which is within the exclusive knowledge of the parties, who entered into the contract. There could be multiple reasons to agree for a lesser consideration of a particular land. The appellant failed to prove that this consideration amount has any relevance with the theory of misuse of stamp and, therefore, merely on the ground of inadequate consideration, specific performance could not be refused.

9]           The learned Counsel for the respondent has rightly invited my attention to Explanation 1 of Section 20 of the Specific Relief Act, 1963 to contend that inadequacy of consideration cannot be a ground to deny specific performance. The seller and the purchaser if have agreed for a lesser consideration amount, it is their choice to do so. The parties will be bound by the contract. Thus, the reason of inadequacy of consideration will be of no help to the appellant to refuse specific performance of contract.

10]           The learned Counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others [AIR 1996 SC 2814]* to contend that the person claiming specific performance of contract if not coming with clean hands, the decree of specific performance could not be granted. This judgment is relied upon on the count that the respondent has suppressed true facts. He has not disclosed the reason for reducing the price of consideration in subsequent agreement.

11] I do not find any substance in the said plea. The parties, i.e., the appellant and the defendant have entered into subsequent agreement. In the circumstances, both the parties will share burden to prove the necessity to agree to sale the property for a particular sum. It will be impermissible to jump to the conclusion that it is the respondent who has played mischief or that has suppressed certain fact or that has not come clean before the Court. The judgment, therefore, will be of no help to the appellant.

12] In the circumstances, it cannot be said that the agreement dated 13/7/2005 was shrouded with suspicious circumstances. The first substantial question of law is accordingly answered in the negative.

13] So far as the second substantial question of law is concerned, the appellant before the First Appellate Court come up with a theory of permitting amendment in written statement. The appellant, by way of amendment, intended to put forth a defence that in the event of specific performance is

granted, the appellant would become a landless person and the only source of income would go away. Further amendment was as regards comparative hardship, which is likely to be caused to the appellant and hence discretionary relief of specific performance ought to be not granted. According to the appellant, the amendment was necessary and in fact he instructed his Counsel appearing before the trial Court, but the said fact was not incorporated in the pleading.

14]           The question is whether the appellant's version is acceptable. What he says is that he had instructed his Counsel to incorporate the aforesaid facts but has not done so. It is not the case of the appellant that this fact of failure of Counsel to include the aforesaid pleading was known to him when he entered witness box. In that sense, the appellant carried the presumption, when he entered witness box, that these pleadings have been incorporated. Despite such fact, the appellant has not uttered a word in his chief examination as regards his becoming landless or as regards comparative hardship, etc. The learned Counsel for the appellant failed to

convince the Court as to why did the appellant not deposed about the aforesaid facts, which according to him, were instructed to be pleaded before the trial Court.

15]           The appellant has, for the first time, came up with this theory of the Counsel committing mistake when he filed the appeal. This clearly indicates that until appeal is filed, he carried an impression that his instructions of adding pleading in the written statement were adhered to by the Counsel appearing before the trial Court. It was therefore expected from him to depose the aforesaid facts in chief examination. He has not done so, which clearly falsifies his case of giving instructions to incorporate the aforesaid pleading in written statement. The First Appellate Court has, therefore, rightly rejected the application and has, thus, not committed any error in not permitting the appellant to amend the written statement. The second substantial question of law is accordingly answered in the negative.

16]           The third substantial question of law relates to

causing undue hardship to the appellant if the decree of specific performance is granted. In absence of pleading and evidence in this regard, to my mind, the question will have to be answered in the negative and stands answered accordingly.

17]           Having answered the questions of law in manner hereinabove, there is no merit in the appeal. The appeal is accordingly dismissed.

**JUDGE**

Sumit