



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 602 OF 2006

Kailash Gowardhan Bhadech,
Aged about 43 years,
Occ.- Business and Agriculturist,
R/o. Buldana, Tq. and Dist. Buldana.

.... APPELLANT
Original Plaintiff.

// VERSUS //

- 1) Laxman Dhondu Bhakre (Dead)
through his Legal Representatives :
 - 1-A) Smt. Mamtabai Wd/o Laxman Bhakre,
(Since deceased through LRs.)
 - 1-B) Prakash S/o Laxman Bhakre,
Aged about 50 years,
R/o. Sagwan,
Tq. and Dist. Buldana.
R/o. Sagwan, Tq. and Dist. Buldana.
 - 1-C) Sau. Jijabai Sukhdeo Shinde,
(Married Daughter),
Aged about 54 years,
R/o. Dhalsavangi,
Tq. and Dist. Buldana.
(Also Legal Representatives of
Respondent No.1-A)
- 2) Shenfad Laxman Bhakre,
Aged about 35 years, Occ.-Agriculturist,
(Also Legal Representative of
Respondent No.1-A), R/o. Sagwan,
Tq. and Dist. Buldana.

.... RESPONDENTS
Original Defendants.

Mr. R. L. Khapre, Senior Advocate assisted by Mr. V. A. Lohiya,
Advocate for Appellant.

Mr. S. S. Deshpande, Advocate for Respondents.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 18.09.2024.

DATE OF PRONOUNCING THE JUDGMENT : 19.12.2024.

JUDGMENT.

1. This second appeal is preferred against the judgment and decree passed by the Adhoc Additional District Judge, Buldana in the Regular Civil Appeal No.64/1998, dated 10.03.2006. The said judgment was preferred against the judgment and decree passed by the Joint Civil Judge, Junior Division, Buldhana in Regular Civil Suit No.87/1991, dated 15.04.1998. The suit was decreed and the appeal was partly allowed.

CLAIM :

2. A Contract of sale was executed between the plaintiff and the defendant No.1 for the consideration of Rs.21,000/- of agricultural field bearing Block No.92, admeasuring 55 R., is the subject matter of the suit. The plaintiff averred that, he paid the consideration of Rs.10,000/- to the defendant No.1 and took the possession of suit property on the same day. It was agreed that the sale-deed to be executed on or before 31.5.1991. The suit property contains a Well with an electric motor, and the defendant No.1 has a 2/3rd share in the water of the said Well. However, after executing

the agreement to sale, the son of defendant No.1 stated that the electric motor was sold by his father to him and produced a receipt dated 3.3.1983. The defendant No.2 – son of defendant No.1, has also filed a suit bearing No. Reg.C.S. No.71/1991, against the plaintiff and obtained an exparte injunction on 3.5.1991 and thereby restrained the plaintiff from entering the suit property. The plaintiff was always ready and willing to perform his part of contract. The defendant No.1, tried to avoid the execution of sale-deed, consequently, the plaintiff sent a notice to the defendant for execution of sale-deed. However, the defendant did not pay any heed to the notice. Therefore, the plaintiff filed a suit for the specific performance of the contract.

DEFENCE :

3. The defendant No.1 is father of defendant No.2. They denied the claim of the plaintiff and asserted that an amount of Rs.7,500/- was borrowed by defendant No.1 from the plaintiff's father, and therefore, for security of that amount, the said agreement for sale was executed. It was a money lending transaction. The possession of the suit property was not delivered to the plaintiff. The defendant No.1 has no right to sale the suit property as it is a joint

family property. The defendants lastly prayed for the dismissal of the suit.

4. The learned Trial Court held that the plaintiff proved the contract of sale and also receipt of Rs.10,000/- was received by the defendant No.1 at Exhibit-75. It was also held that the plaintiff was ready and willing to perform his part of contract. The Court further held that the defendants also failed to prove that the transaction of security for the amount of Rs.7500/- was borrowed by the defendant No.1. Therefore, the learned Trial Court decreed the suit and directed the plaintiff to pay the balance amount of consideration of Rs.11,000/- to the defendant and the receipt of said amount, the defendant was directed to execute the sale-deed of the suit property.

5. The learned First Appellate Court held that the defendant will suffer hardship as contemplated by Section 20 of the Specific Relief Act, 1963 (for short the “SR Act”) and appeal was partly allowed. The learned First Appellate Court set aside the decree for specific performance of contract and directed the defendant No.1 to repay the amount of Rs.10,000/- with interest at the rate of 6% per annum.

6. The following substantial question of law is formed :

“Whether the first appellate Court fell in error in holding that the defendant would suffer hardship without looking into the question as to whether the hardship was unforeseen?”

7. The learned Senior Advocate for the appellant submitted that the judgment and decree of the first appellate Court is not legal and correct. He further submitted that the defendant did not enter into the witness box and, therefore, the learned Trial Court rightly drawn the adverse inference against the defendant. The learned Senior Advocate for the appellant further submitted that, unless there is a perversity and illegality in the exercise of the discretion of the Trial Court, the First Appellate Court cannot interfere into the findings. He relied upon the following precedential laws :

(i) ***Prakash Chandra Vs. Angadlal & Ors.***, reported in ***AIR 1979 SC 1241***, para 9 reads as under :

“9. The ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief. In the present case the conduct of the appellant has not been such as to disentitle him to the relief of specific performance. He has acted fairly throughout, and there is nothing to show that by any act of omission or commission he encouraged Mohsinali and Qurban Hussain to enter into the sale with the first and second respondents. There is no evidence that the appellant

secured an unfair advantage over Mnhsinai and Qurban Hussain when he entered into the agreement. Nor is there anything to prove that the performance of the contract would involve the respondents in some hardship which they did not foreses. ”

(ii) ***Hariba Babu Babar & Anr., Vs. Appasaheb Dadu Nagargoje***, reported in ***2007(5) Mh.L.J. 260***, wherein it was held that decreeing specific performance, interference by the Appellate Court with the discretion exercised by the trial Court is permissible.

(iii) ***K. Prakash Vs. B. R. Sampath Kumar***, reported in ***(2015) 1 SCC 597***, para 16 reads as under :

“16. The principles which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then

the Court has to exercise its discretion in favour of granting relief for specific performance.”

8. The learned Senior Advocate for the appellant lastly prayed that the appeal be allowed by setting aside the impugned judgment and decree of the First Appellate Court.

9. The learned Advocate for the respondents submitted that the judicial discretion is exercised by the learned First Appellate Court based on convincing and acceptable reasons. There is no substance in the ground of objection raised in this appeal to interfere in the impugned judgment. He is relying upon the following precedential laws :

(i) ***Nirmala Anand Vs. Advent Corporation (P) Ltd., and Ors.***, reported in ***2003(1) Mh.L.J.***, wherein it was held that, “it is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance.”

(ii) ***Jayakantham and Ors., Vs. Abaykumar***, reported in ***2017(5) Mh.L.J.***, wherein it was held that, “jurisdiction to decree specific performance is discretionary. Court is not bound to grant relief of specific performance merely because it is lawful to do so”.

10. The learned Advocate for the respondents lastly submits that the appeal is devoid of merit and therefore, should be dismissed.

11. Perused the impugned judgment of both the Courts and record and proceedings.

12. The execution of Contract of Sale (Exhibit-75) of suit property is not disputed by the defendants. They have taken stand that the Contract of Sale (Exhibit-75) was only for the purpose of securing the amount of Rs.7,500/- paid as per illustration, Section 2 of the Indian Evidence Act, when signature is admitted by the defendants therefore, burden lies upon the defendants to prove that for what reason he signed it. The defendant No.1 however, did not enter into the witness box. The alleged transaction is money lending transaction is not proved by the defendant.

13. As far as hardship, as contemplated by Section 20 of the SR Act, is concerned, the learned Trial Court has elaborately discussed the evidences and by convincing and acceptable reasons held that the defendant No1, who executed the Contract of sale Exhibit-75, deliberately did not enter the witness box. Therefore, an adverse inference has been drawn against the defendant No.1 as per illustration (g) of Section 114 of the Registration Act. There is no

plausible explanation, as to why the defendant No.1 did not enter the witness box. The onus of proof is thus not discharged by the defendant No.1 to prove that the alleged transaction was a transaction for security of amount of Rs.7,500/-.

14. To prove the alleged hardship, there is absolutely no evidence of the defendant No.1, that he will suffer hardship and without such evidence of defendant No.1, no inference can be drawn as to the hardship as held by the First Appellate Court. When the judicial discretion is exercised by the learned Trial Court, the first Appellate Court cannot interfere in the said discretion.

15. Without there being oral evidence as to hardship to the defendant No.1, the First Appellate Court grossly erred in holding that the defendant No.1 will suffer by hardship as contemplated by Section 20 of the SR Act. The First Appellate Court failed to reappreciate evidence properly and also failed to exercise judicial discretion in this regard. Therefore, the judgment and the decree of the First Appellate Court is illegal and erroneous. It deserves to be set aside and the judgment and decree of the learned Trial Court deserves to be upheld. Hence, the substantial question of law is answered in the 'Negative', that the First Appellate Court ought not to have allowed the appeal on the ground of hardship. The argument of

the learned Advocate for the respondent is not acceptable in this regard. The precedential law of *Nirmala Anand* cited supra is not helpful the defendant as there is no evidence of hardship which he did not foresee likely to cause to the defendant as alleged by him. However, considering the ratio laid down in the precedential law of *Nirmala Anand* cited supra increase of price during pendency of litigation, it would not proper as no such evidence of escalation of price is produced on record.

16. The appeal deserves to be allowed. The impugned judgment and decree deserves to be set aside. The judgment and decree of the learned Trial Court deserves to be modified. Hence the following order :

- (i) The appeal is **allowed**.
- (ii) The judgment and decree passed by the First Appellate Court is set aside.
- (iii) The judgment and decree passed by the Trial Court is upheld.
- (iv) The record and proceedings be sent back.
- (v) No cost.

(SANJAY A. DESHMUKH, J.)