



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.316 OF 1995
WITH
CIVIL APPLICATION NO. 4741 OF 1995 IN SA/316/1995

Rajaram Deoram Patil,
age 55 years, Occ. Agriculturist,
R/o Chaugaon, Tq. Chopda,
District Jalgaon.
Deceased through L.Rs.

1. Shantabai w/o Rajaram Patil,
age 79 yrs, Occ. Nil.
2. Vasant s/o Rajaram Patil,
age 56 years, Occ. Agriculture,
3. Suresh s/o Rajaram Patil,
age 53 years, Occ. Agriculture.
4. Sudhakar s/o Rajaram Patil,
age 44 yrs, Occ. Agriculture.
5. Sharad s/o Rajaram Patil,
age 43 yrs, Occ. Agriculture.
6. Mina w/o Kishor Chavan,
age 48 yrs, Occ. Agriculture Daughter

Appellant nos. 1 to 6 are
R/o Lasur, Tq. Chopda, Dist. Jalgaon.

7. Laxmibai w/o Shravan Kunbi,
age 53 yrs, Occ. Household. Daughter.
R/o Ward No.6, Behadiya,
Tq. Pansemal, Dist. Khargaon (M.P).
8. Ushabai w/o Lotan Patil,
age 45 yrs, Occ. Household. Daughter
R/o Maruti Chowk, At Post Morane Pr.
Laling, Tq. & Dist. Dhule.

9. Shobha w/o Sudhakar Patil, Daughter.
age 49 yrs, Occ Household.
R/o Saitane, Kharde-Khurd,
Tq. Dondaicha, District Nandurbar. Appellants.

Versus.

1. Fulchand Jasraj Jain @ Surana,
age 75 yrs, Occ. Agriculturist and Trade,
R/o Lasur, Tq.Chopda,Dist. Jalgaon.
Died Through L.Rs.

- R-1. Galraj Fulchand Jain @ Surana,
age 40 yrs, Occ. Business.

- R-2 Suresh Fulchand Jain @ Surana,
age 38 yrs, Occ. Business.

- R-3. Naresh Fulchand Jain @ Surana,
age 35 years, Occ. Business.

- R-4. Rajendra Fulchand Jain @ Surana.
Age 30 yrs, Occ. Business.

- R-5. Shobhabai Jaimal Sancheti,
age 42 yrs, Occ. Household.

- R-6. Lalita Vijay Raka,
age 32 yrs, Occ. Household.

All R/o Lasur, Tq. Chopda,
District Jalgaon.

Respondents
(Orig plaintiffs)

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Advocate for Appellant : Mr. S. S. Kulkarni

Advocate for Respondents : Mr. S. T. Mahajan

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CORAM : S. G. CHAPALGAONKAR, J.

Date : March 10, 2025

JUDGMENT :-

1. The appellants/original defendants impugn the judgment and decree dated 16.6.1995 passed by the Additional District Judge, Amalner in Regular Civil Appeal No.606 of 1989, thereby upholding the judgment and decree dated 7.10.1989 passed by the Civil Judge J.D. Chopda in Regular Civil Suit No.28 of 1987 by which suit of respondent/plaintiff seeking decree of specific performance of contract has been decreed.

2. Respondent/plaintiff filed R.C.S. No.28 of 1987 seeking relief of specific performance of contract and possession against appellant/defendant in respect of Survey No.38/2 situated at Village Chaugaon, Tq. Chopda, District Jalgaon. It was contention of plaintiff that defendant entered into an agreement dated 23.4.1974 in respect of suit land for consideration of Rs.8,000/- (Rs. Eight Thousand). The agreement was registered on very same day. Defendant agreed to obtain permission of competent authority for sale of land as provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short Consolidation Act) were made applicable to the suit land.

Inspite of execution of agreement to sale, defendant took no steps to execute the sale-deed. On 21.7.1986 plaintiff sent registered notice to defendant and called upon him to execute the sale-deed. Plaintiff was ready and willing to get executed sale-deed, but, defendant failed to perform his part of contract. Even, he retained possession of the suit property after receiving entire amount of consideration. Eventually, suit was instituted for specific performance of contract and possession.

3. Defendant refuted plaintiff's claim denying agreement to sale. He pleaded that land is his ancestral joint family property. His brother Vishram and others are not added as party to the suit. According to him, valuation of suit land in the year 1974 was more than Rs.60,000/- and it is highly improbable that defendant would agree to sell the land for Rs.8,000/-. Defendant further contend that in the year 1967 he had obtained loan from the bank for excavation of well. Land was mortgaged to the Bank and it was at the verge of auction. Defendant approached plaintiff and obtained hand loan of Rs.5,500/- to satisfy bank loan. Agreement to sale was executed by way of security for hand-loan. Plaintiff took income from land for the year 1974-1975 to 1977-1978 and

same has been adjusted towards loan amount. Agreement to sale has been misused for filing the present suit. It is further contended that the suit is barred by limitation.

4. Trial Court framed issues, recorded evidence of the parties, finally decreed the suit of the plaintiff directing defendant to execute sale-deed in favour of the plaintiff and also hand over possession of suit property. Plaintiff is further held entitle for mesne profit from date of filing of the suit.

5. Aggrieved defendant filed Regular Civil Appeal No.606 of 1989 before the District Judge, who dismissed appeal upholding decree of the Trial Court.

6. Defendant filed present second appeal. It has been admitted vide order dated 10.4.1996 observing that ground no.9 in appeal memo involves substantial question of law, which reads thus :-

“9. Whether the learned Judge failed to see that the suit itself is barred by limitation, as the alleged transaction is dated 23.4.1974, and the suit has been filed for specific performance in the year 1987.”

7. When second appeal was placed for final hearing before this Court on 17.2.2025, learned advocate appearing for the appellant pressed into service three additional substantial questions of law, which reads thus :-

“i. Whether the plaintiff and the defendant could have entered into an agreement to sell during the consolidation scheme in view of the bar under section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ?

ii. Whether the bar on transfer of holdings under Section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 also puts an embargo on the parties to enter into an agreement to sell ?

iii. Whether the word ‘Transfer’ in Section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 includes an agreement to sell ?

8. In light of the aforesaid questions of law parties were put to notice that the appeal will be heard on in all four substantial questions of law, one that was framed at the time of admission with additional substantial questions of law and appeal was posted for hearing on 24.2.2025. Accordingly, learned Advocates for respective parties advanced their submissions.

9. In the aforesaid background, Mr. S.S. Kulkarni, learned advocate appearing for the appellants invites attention of this Court to the agreement to sale dated 11.4.1974 which is registered on 23.4.1974. It is specifically stipulated in the agreement that provisions of Consolidation Act are implemented at village and plaintiff would obtain necessary permission for sale of land from competent authority. According to Mr. Kulkarni, in view of section 31 of Consolidation Act bars any transfer of the Land once provisions of Consolidation Act are impleaded. According to him, agreement to sale would amount to sale for purpose of section 31 of Consolidation Act. In support of his contentions, he relies upon observations of this Court in case of **Vinayakrao Vs. State of Maharashtra reported in 1975 Mh.L.J. 566** and **Lataru Sapaku Thakur Vs. Hansram Sakharam Pardhi reported in 1983 Mh.L.J. 423**. He would submit that expression “or otherwise” used in section 31 (1)(a) of the Consolidation Act would cover an agreement to sale. According to him, if effect of passing of a decree for specific performance of contract inevitably is to result in bringing about transaction of sale, it would also be covered by expression “or otherwise” appearing in section 31(1)(a) of the Act. Therefore, passing a decree for

specific performance of contract would be contrary to the provisions of the Act.

10. Mr. Kulkarni, would further submit that agreement to sale has been registered on 23.4.1974. Suit has been instituted in the year 1987. Therefore, the suit is hopelessly barred by limitation. The Courts below failed to appreciate the aspect of readiness and willingness to perform contract and erroneously decreed the suit.

11. Per contra, Mr. Mahajan, learned advocate appearing for respondent nos.1 to 6 vehemently submit that section 31 of Consolidation Act would have no application in facts of present case. To buttress his submissions, he relies upon language of section 31 itself, which is made applicable to the holdings which are allotted under that act. He would further invite attention of this Court to Section 31 (AB) which nullified effect of section 31 for transactions made on or 15th Day of November, 1965 till date of Amendment Act of 1977.

12. Having considered submissions advanced on substantial questions of law framed in this appeal, apparently, first contention relates to effect of section 31 of the

Consolidation Act on subject transaction. Section 31 of the Consolidation Act puts restriction on alienation and sub-division of consolidated holdings. It reads thus :-

31. [Restrictions on alienation and sub-division of consolidated holdings.]

(1) Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof shall save as otherwise provided in this section—

(a) be transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue) or by way of gift, exchange, lease, or otherwise; or

(b) be sub-divided, whether under a decree or order of a Civil Court or any other competent authority, or otherwise, so as to create a fragment, without the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances and subject to such conditions as may be prescribed.

(2) Nothing in sub-section (1) shall apply to any land—

(a) which is situated in any area for which—

(i) a municipal corporation is constituted under the 8Bombay Municipal Corporation Act (Bom. III of 1888), the 9Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949) or the 1City of Nagpur Corporation Act, 1948 (C. P. and Berar Act II of of 1950); or

(ii) a municipal council is constituted under the 2Maharashtra Municipalities Act, 1965 1965 (Mah.XL of 1965); or

(iii) a cantonment is constituted under the Cantonments Act, 1924 (II of 1924); or

- (b) which is situated in a notified area for which a Special Planning Authority is constituted or appointed under section 40 of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966); or
 - (c) which is situated in an area designated as a site for a new town for which a Development Authority is constituted under section 113 of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966); or
 - (d) which is situated in any area specified by the State Government, by notification in the Official Gazette, as being reserved for non-agricultural or industrial development.
- (3) Nothing in sub-section (1) shall also apply to any land which is to be transferred—
- (i) to the tenant of the holding or his heir; or
 - (ii) to the owner of the adjoining holding who cultivates his land personally; or
 - (iii) to an agriculturist or agricultural labourer, **in its entirety**; or
 - (iv) to a person who is rendered landless by reason of acquisition of his land for a public purpose; or
 - (v) to a co-operative society; or
 - (vi) by way of gift (whether by way of trust or otherwise) bona fide made by the owner in favour of a member of his family; or
 - (vii) by way of exchange, where such land is cultivated personally by the holder, for any other land allotted under this Act, which is also likewise cultivated personally by its holder :
- Provided that, no such transfer shall be made so as to create a fragment.

13. Section 31AB has been introduced for validation of certain transfer or subdivision made after 15th November, 1965 and before commencement of the Maharashtra Amendment Act of 1977, which reads thus :-

31AB. Validation of certain transfers or sub-divisions made on or after 15th November 1965 and before commencement of Mah. XLI of 1977.—

- (1) No transfer or sub-division of any land in contravention of section 31 as it stood immediately before the date of commencement of the Bombay Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 1977 (Mah. XLI of 1977), made **on or after the 15th day of November 1965 and before the date of such commencement shall be** deemed to be void or ever to have become void merely on the ground that such transfer or sub-division is effected in contravention of the provisions of that section as it stood before such commencement and shall be deemed to be valid if such transfer or sub-division is in accordance with the provisions of section 31 as substituted by the said Act.
- (2) For the purpose of this section, a certificate granted by the Collector, after holding such inquiry as he deems fit, that any transfer or sub-division of any land is valid under this section shall be final and conclusive evidence in that behalf. Any holder may apply to the Collector for such certificate.]

14. Plain reading of aforesaid scheme indicates that Act itself was brought into existence to prevent fragmentation of agriculture holdings to provide for consolidation of agriculture holdings for purpose of better cultivation thereof. Consolidation of holdings is defined as the amalgamation and where necessary the redistribution of holdings or portions of holdings in any village, mahal or taluka or any part thereof so as to reduce the number of plots in holdings. In light of the object of legislation, section 31 seeks to prevent creation of

fragment by any mode of transfer and bans for transfer of holdings allotted under this act. However, section 31AB introduced vide amendment of 1977 protects transfers effected from 15th day of 1965 till commencement of amendment Act of 1977 although, such transfers violates provisions of section 31. In present case, subject transaction would not be affected in light of protection incorporated under section 31AB. Even otherwise as rightly pointed out by Mr.Mahajan, nothing in Sub-Section(1) of Section 31 applies to the land which is to be transferred to an agriculturist on agriculture labour in its entirety as prescribed under sub-clause (iii) of clause 3 of section 31. It is not disputed that plaintiff is an agriculturist and transfer is in its entirety. It is nobody's case that it would be a fragment of holding allotted under this Act. Therefore, bar under section 31 of Consolidation Act would not vitiate subject agreement to sale. Hence, additional substantial questions of law as framed under order dated 17.2.2025 are answered accordingly.

15. Mr. Kulkarni, raises contention that present suit is barred by limitation as transaction is dated 24.04.1974 and suit has been instituted in the year 1987. Appellate Court has

considered aspect of limitation. The point no.5 was specifically framed for that purpose. Section 54 of the Limitation Act deals with the Limitation for filing the suit for specific performance of agreement to sale, which reads thus :-

54. For specific performance of a contract :-

Article 54 of the Limitation Act, 1963 states that the time limit to file a suit for specific performance is three years. This time limit starts from the date set for performance, or if no date is set, from the date when the plaintiff is notified that performance has been refused.

16. Admittedly, in present case date for execution of the sale-deed is not fixed under agreement. On the other hand, defendant was put under obligation to obtain necessary permission for execution of the sale-deed from competent authority under consolidation Act. There is nothing on record that defendant communicated his refusal to execute the sale-deed expressly or impliedly till service of legal notice by plaintiff seeking specific performance, which was served upon him just prior to filing of the suit. It is, therefore, difficult to accept contention of defendant that suit is barred by limitation.

17. Lastly, it is argued on behalf of the appellant that assuming that suit is within limitation, 13 years long delay in instituting suit dis-entitles plaintiff from seeking specific

performance of contract and seek grant of discretionary relief of specific performance of contract.

18. It has come in the evidence that entire amount of consideration i.e. Rs.8,000/- was parted by the plaintiff to defendant at the time of execution of agreement to sale. Even thereafter, defendant continued in possession of suit land. Nothing was remained to be performed by plaintiff towards part of his contract. Defendant after receipt of entire consideration amount, enjoyed possession of the property without taking necessary steps towards execution of sale-deed by obtaining requisite permission from competent authority. Therefore defendant cannot be given premium over his own wrong. Relief of specific performance being discretionary, this Court finds that refusing to grant specific performance on the ground of delay of 13 years to institute suit would cause greater hardship to the plaintiff. Perusal of the agreement to sale show that it has been registered on 23.4.1974. Both the Courts have concurrently recorded finding that plaintiff proved the agreement to sale and rejected defendants case that it was the document of security towards loan. The Courts below have exercised discretion keeping in mind all relevant aspects.

Concurrent finding so recorded need not be disturbed in Second Appeal. In the result, Second Appeal sans merit, hence **dismissed**. Pending civil application, if any, also stands **disposed of**.

(S. G. CHAPALGAONKAR)
Judge.

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