



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 380 OF 1994 WITH
CIVIL APPLICATION NO. 4794 OF 1994

Devidas Haribhau Jogdand
(died) through LR's

... APPELLANT
(Orig. Defendant)

- 1-A) Parvatibai w/o Devidasrao Jogdand
Age : 80 years, Occu – Nil,
R/o Taluka – District Beed
- 1-B) Malanbai w/o Devidasrao Jogdand
Age : 75 years, Occu – Nil,
R/o Beed
(Deleted as per court order dated 26/08/2022)
- 1-C) Pandit s/o Devidasrao Jogdand
Age : 60 years, Occu – Pensioner
R/o Beed, Taluka – District Beed
(Died) through LR's
- 1-C-i) Shantabai w/o Panditrao Jogdand,
Age : 69 years, Occu – Household,
R/o. M.S.E.B. Colony, Shahu Nagar,
Beed, Tq. & District Beed
- 1-C-ii) Mahes s/o Panditrao Jogdand,
Age : 38 years, Occu – Service,
R/o. M.S.E.B. Colony, Shahu Nagar,
Beed, Tq. & District Beed
- 1-D) Balkrishna s/o Devidasrao Jogdand
Age : 45 years, Occu – Government Service,
R/o. Ahmednagar, Tq. & Dist. Ahmednagar,
- 1-E) Ambad s/o Devidasrao Jogdand
R/o Beed, Tq. & Dist. Beed

VERSUS

1. Vithal s/o Yamaji Kolpe,
Age : 50 years, Occu.: Agriculture,

- R/o. Belgaon, R/o Limbaganesh, Tq. Beed
2. Nana s/o Yemaji Kolpe
(Died) through LR's
- 2(1) Sou. Godabai Tukaram Ingole
Age : 30 Yrs., Occu.: Household,
r/o Somnath Wadi,
Tq. & Dist. Beed.
3. Deorao s/o Yemaji Kolpe
(Died) through LR's
- 3A) Murlidhar Deorao Kolpe
Age : 64 Yrs., Occu.: Agri.
- 3B) Jalindar Deorao Kolpe
Age : 60 Yrs., Occu.: Agri.
- 3C) Mudhukar Deorao Kolpe
Age : 50 Yrs., Occu.: Agri.
- 3D) Anusaya Sahebrao Ingole
Age : 67 Yrs., Occu.: Household
- 3E) Nilawati Popat Jadhav
Age : 48 Yrs., Occu.: Household
All r/o Somnath Wadi, Tq. & Dist. Beed
4. Dnyanoba s/o Arjuna Madve,
Age : 30 Yrs., Occu. Agriculture,
r/o as above
5. Jeevan s/o Ambu Savant,
Age : 26 Yrs., Occu. Agriculture,
r/o as above
6. Shankar s/o Raghu Jadhav,
Age : 53 Yrs., Occu. Agriculture,
r/o as above
7. Sonaji Keru Jadhav
(Died) Through LR's
- 7A) Subhash Sonaji Jadhav
Age : 38 Yrs., Occu. Agri.
- 7B) Popat Sonaji Jadhav
Age : 30 Yrs., Occu. Agri.

- 7C) Shrimant Sonaji Jadhav
Age : 25 Yrs., Occu. Agri.
- 7D) Sunita Yogiraj Bhoite,
Age : 35 Yrs., Occu. Household
- All r/o Somnath Wadi, Tq. & Dist. Beed.
8. Yedba s/o Ganpati Kolpe,
(died) through LR's
- 8a. Dnyanoba s/o Yedba Kolpe
Age : 34 Years, Occu. Agriculture,
r/o Belgaon, u/v Limbaganesh, Tq. Beed.
- 8b. Prabhu s/o Yedba Kolpe
Age : 45 Years, Occu. As above.
- 8c. Sahadeo s/o Yedba Kolpe,
Age : 32 Years, Occu. As above.
- 8d. Babu s/o Yedba Kolpe
Age : 25 Years, Occu. As above.
- 8e. Suman w/o Bajirao Khillare,
Age : 46 Years, Occu. Household,
r/o Pokhari, u/v Limbaganesh, Tq. Beed.
- 8f. Antikabai w/o Mahadeorao Mulik
Age : 39 Years, Occu. Household,
r/o Belgaon, u/v Limbaganesh, Tq. Beed.
- 8g. Vaijyanta w/o Ankush Wayambhat,
Age : 26 Years, Occu. Household,
r/o Limbaganesh
- 8h. Kantkabai w/o Dattu Jare
Age : 36 Years, Occu. Agriculture,
r/o Limbaganesh
9. Keshav s/o Laxman Kolpe,
Age : 43 Years, Occu. Agriculture,
r/o Belgaon, u/v Limbaganesh, Tq. Beed.
10. Shripati Keru Shelke

- (died) Through LR's
- 10A) Gorakh Shripati Shelke
Age : 45 Yrs., Occ. Agri.
- 10B) Sharad Shripati Shelke
Age : 40 Yrs., Occ. Agri.
- 10C) Kalyan Shripati Shelke
Age : 38 Yrs., Occ. Agri.
- 10D) Mohan Shripati Shelke
Age : 36 Yrs., Occ. Agri.
All r/o Belgaon, Tq. & Dist. Beed.
11. Limba s/o Madha Shelke
(died) Through LR's
- 11A) Sou. Ashabai Uttam More
Age : 35 Yrs. Occu. Agri.
- 11B) Sou. Meena Dnyandeo Dandawate
Age : 33 Yrs. Occu. Agri.
- 11C) Sou. Mangala Bhaskar Bhagwat
Age : 31 Yrs. Occu. Agri.
- 11D) Mahadeo Limbaji Shelke
Age : 29 Yrs. Occu. Agri.
- 11E) Sou. Rukhminibai Limbaji Shelke
Age : 48 Yrs. Occu. Household
All r/o Belgaon, Tq. & Dist. Beed.
12. Kondiba s/o Mahada Kolpe
Age : 47 Yrs. Occu. Agriculture,
r/o as above
13. Babu s/o Sakharam Shelke,
Age : 35 Yrs. Occu. Agriculture,
r/o as above
14. Bansi s/o Dattu Kolpe
(Died) Through LR's
- 14A. Yuvraj Bansi Kolpe
Age : 25 years, Occu. Agril.
R/o Gelgao, Tal. and Dist. Beed

15. Raghunath s/o Dattu Kolpe
Age : 30 Yrs. Occu. & r/o as above

... RESPONDENTS
(Orig. Plaintiffs)

Mr. M. M. Patil Beedkar, Advocate for Appellant

Mr. M. K. Deshpande, Advocate for Respondent Nos. 1, 2A, 3A to 3E,
4 to 6, 7A to 7D, 8A to 8H, 9, 10A to 10D, 11A to 11E, 12, 14A and
15

CORAM : R. M. JOSHI, J.

RESERVED ON : 31st JULY, 2025

PRONOUNCED ON : 6th AUGUST, 2025

JUDGMENT :-

1. This Appeal, filed by original defendant under Section 100 of the Code of Civil Procedure (for short 'CPC') takes exception to the judgment and decree dated 08/10/1984 passed by the 2nd Jt. C.J.J.D., Beed in R.C.S. No. 424/1979, which came to be confirmed in R.C.A. No. 413/1984, whereby the decree of specific performance of contract came to be passed in favour of the plaintiffs.

2. This Court by order dated 04/03/2025 framed following substantial questions of law:

"i) Whether the finding as regards Section 16(c) of the Specific Relief Act, 1963 recorded by the learned Courts are perverse?

ii) Was the Suit barred by limitation?

iii) Whether the learned Courts have erred in granting discretionary relief of specific performance to the plaintiff having regard to his conduct?"

3. The facts which led to the filing of this Appeal can be narrated in brief as under:-

(i) Plaintiffs, 15 in number, filed suit being R.C.S. No. 424/1979 before C.J.J.D., Beed for decree of specific performance of contract of sale of lands. The suit properties as described in the plaint are Survey No. 494 admeasuring 11 acres and 16 R and Survey No. 497 half share towards western side from 25 acres 34 R lands situated at village Limbaganesh, Tq. and District Beed. It is the case of the Plaintiffs that Defendant was liable to pay Rs.7000/- odd amount to City Municipality, Beed in respect of some contract. Municipality moved the Collector and got the suit lands attached for the recovery of said amount as land revenue. The suit properties were auctioned. Rakhmaji purchased the suit land bearing Survey No. 494, whereas Khandu purchased the suit land bearing Survey No. 497 in provisional auction sale effected on 27/05/1963. The auction sale was placed before the Collector for confirmation. Defendant in the meantime deposited some amount and requested the Collector to grant installments to pay the remaining amount. Collector granted his request. The Defendant deposited a sum of Rs.5000/- on 20/04/1964 and sought further time. The time sought was refused by the Collector and the auction sale was confirmed by order dated 20/11/1964. The Defendant deposited balance amount of Rs.2467.37 on 01/12/1964 and applied for the Collector to set aside the sale. This Application was rejected by the Collector on 29/12/1964. The challenge to the said order in Appeal before the Collector was unsuccessful. Further exception thereto in revision before the State Government also could not be succeeded. The

Defendant, therefore, applied to the High Court under the Article 227 of the Constitution of India by filing Civil Revision Application No. 1675/1968. This Court by judgment dated 28/02/1972 allowed the Petition and set aside the auction sale. The Defendant was, however, directed to deposit the amount along with interest at the rate of 12% on Rs.4200/- and Rs.700/- for three years. The possession of the suit properties were directed to be restored on the payment of the said amount along with the interest. With setting aside of the auction sale, the Defendant continued to be the owner of the suit land.

(ii) It is the case of the Plaintiffs that immediately after provisional auction of the suit property was done, Defendant wished to sale the suit properties to get maximum market value and therefore requested the Plaintiffs to purchase the same, who agreed to the purchase the properties. Agreement to sale (i.e. Isar Pavti) came to be executed by the Defendant with Plaintiff Nos.1 to 13 and father of Plaintiff Nos.14 and 15 sale of suit properties for total consideration of Rs.20,000/-. It is claimed by the Plaintiffs that the paid Rs.1000/- towards earnest money and further amount of Rs.7280/- was also paid. The remaining amount was to be paid at the time of execution of sale deed. It is the case of Plaintiffs that Defendant agreed that he would deposit entire dues of Municipality. They further claimed that they approached to the Defendant from time to time but Defendant promise to fulfill the contract within a

year. It is claimed that 23/04/1964 a registered Isar Pavti came to be executed by the Defendant in favour of the Plaintiffs. The shares of the Plaintiffs were also settled inter se between them. On execution of the Isar Pavti Plaintiff Nos.1 to 13 and deceased Dattu requested the Defendant to deposit whole of his dues and apply for setting aside provisional auction sale but the Defendant did not do so. Plaintiffs claimed that recently they came to know about the High Court's decision and all this time Defendant used to tell them about the pendency of the proceeding before the High Court for not executing sale deed. It is claimed that over and above Rs.8280/- Plaintiffs have paid a sum of Rs.2720/- to the Defendant on several occasions, however, the receipt is lost. The Plaintiffs claimed that on 23/10/1979 for the first time the Defendant refused to execute the sale deed and hence suit came to be filed on 10/12/1979 for decree of specific performance of contract.

(iii) The Defendant filed written statement denying the contentions raised by the Plaintiffs. It is admitted that Defendant had become liable to pay Rs.7000/- plus amount to Municipality, Beed but denied the auction of the suit property. It is denied that by the Defendant that he wanted to sale the suit land to any one by private negotiations to fetch maximum market value of suit properties. It is claimed that his main profession is agricultural and therefore, he never wanted to sale the suit lands. It is denied that there was any agreement to sale the suit land to

the Plaintiffs. It is claimed of the Defendant that the amount of Rs.7280/- was paid by the Plaintiffs to him which was to be returned by him with interest within a period of three years from the execution of the agreement dated 23/04/1974. He denied to have received Rs.2720/- or any earnest money. In the additional statement it is claimed by the Defendant that he was and is not in the possession of the suit land. It is claimed that the Defendant orally asked on many occasions to the Plaintiffs to accept the money back which was taken by him from the Plaintiffs but the Plaintiffs did not accept the same until the decision of the High Court. It is claimed that the suit filed by the Plaintiffs is time barred and they have not entitled to receive the money of Rs.7280/-. It is denied that the Plaintiffs demanded specific performance on 20/10/1979 and hence question of refusal thereof would not arise.

(iv) The learned Trial Court framed issues at Exhibit 17. On behalf of the Plaintiffs Nana Kolpe was examined at Exhibit 23 and evidence was led of Babu Kale at Exhibit 25. Defendant entered into witness box and examined himself at Exhibit 28. The learned Trial Court by passing judgment and decree dated 08/10/1984 granted specific performance of contract on payment of remaining consideration of Rs.11720/- in the Court within two months. The issue of execution of agreement to sale payment of earnest money and readiness and willingness to perform part of the contract by the Plaintiffs came to answered in favour of Plaintiffs.

The judgment and decree passed by the Trial Court came to be challenged in Appeal before the District Court in R.C.A. No. 413/1984 unsuccessfully, hence, this Second Appeal.

4. Learned Counsel for the Defendant-Appellant submits that the Plaintiffs have failed to prove the cause of action of 23/10/1979 for filing the suit and therefore suit is not filed within limitation. It is his submission that the agreement to sale is of year 1964, whereas the suit came to be filed in the year 1979 and hence on the face of it, it is not filed within limitation and hence deserves to be dismissed on the count alone. It is his further submission that once a specific date is sought to be contended by the Plaintiffs to be cause of action, the same must be proved by leading cogent evidence. He drew attention of the Court to the evidence of witnesses examined by the Plaintiffs to contend that witness examined by Plaintiffs does not claim the exact date on which the Defendant has denied execution of the sale deed. It is his further submission that the conduct of the Plaintiffs also disentitle the Plaintiffs from getting decree of specific performance of contract. It is his submission that though Plaintiffs have claimed that they paid Rs.2720/- to the Defendant, the said fact has not been proved before the Trial Court. It is his submission by relying upon the judgment of the Hon'ble Supreme Court in case of *Major Gen. Darshan Singh (D) By Legal Representatives and Another Versus Brij Bhushan Chaudhar (D) By Legal*

Representatives, (2024) 3 SCC 489 that when the Plaintiffs made false statements in plaint, they are not held to be entitled for discretionary relief of specific performance. Reliance is also placed on the judgment in case of *Lourdu Mari David and Others Versus Louis Chinnaya Arogiaswamy and Others, (1996) 5 SCC 589*. He drew attention of the Court to the findings recorded by the Trial Court in respect of the agreement to sale (Isar Pavti) that the sale deed would be executed after decision of the High Court and after getting the possession and the said period was indefinite. It is his submission that the said findings are contrary to the documents and hence perverse. He also drew attention of the Court to the observations made by the Appellate Court in paragraph 14 to 15 which according to him are not inconsonance with the material on record, hence deserves to be interfered with. Thus, sum and substance of his contention is that since the suit is barred by limitation and as the Plaintiffs have failed to prove the cause of action so also readiness and willingness to perform their part of the contract, they are not entitled for discretionary relief of specific performance.

5. Learned counsel for the Plaintiffs supported the impugned judgment and decree and contended that a concurrent findings of fact recorded by the Court below cannot be interfered with in exercise of the powers under Section 100 of CPC. It is his submission that perusal of the Isar Pavti indicates that there was no time limit fixed for the specific

performance of the contract. It is his contention that in the facts of the case which are sufficient to indicate that there was provisional sale and confirmation thereof and the challenge thereto was unsuccessful till in the revision before the State Government and it is only after the order was passed by the High Court, the sale was set aside with condition that the Defendant would pay the amount along with the interest. It is his contention that the cause of action of refusal of execution of sale deed is clearly spelt out in the plaint and witness has been duly examined to substantiate the same. It is submitted that by no stretch of imagination it can be held that the suit is barred by limitation. In so far as readiness and willingness is concerned, pleadings and the evidence on record is referred to. He place reliance on the judgment of the Hon'ble Supreme Court in case of *P. Daivasigamani Versus S. Sambandan, (2022) 14 SCC 793*.

6. There is no dispute about the fact that the Defendant executed Isar Pavti dated 23/04/1964 in favour of the Plaintiffs. The Isar Pavti indicates that shares of individual Plaintiffs in the Suit property were decided. There is further admission of the Defendant in respect of receipt of a sum of Rs.7000/- plus amount from the Plaintiffs. In this backdrop question arises as to whether the contention of the Defendant about this being not a agreement to sale but money lending transaction is probable. Once execution of the Isar Pavti is not in dispute and the

receipt of the amount is also accepted, question arises as to what would the need for the Defendant to indicate in the Isar Pavti that 15 persons i.e. Plaintiffs, would have specific shares in the suit property. In case of loan transaction, such determination of share of each Plaintiff would have never appeared in the document. Apart from this a question would arise as to why the loan has been obtained from 15 different persons under one document. Similarly, case sought to be made out by Defendant that his main occupation was Agriculturist and therefore he could not have sold suit property is not conceivable in view of admitted facts that against contract with Municipality amounts was due from him. As against this the case of the Plaintiffs that since there was provisional auction sale of the suit property, Defendant wanted to get maximum values of the suit property and hence agreed to sale the suit property for total consideration of Rs.20,000/- is more probable. On the basis of the evidence on record coupled with the pleadings with pleadings of the parties it cannot be held that this is a money lending transaction but as held by the Court below the Defendant had agreed to sale the suit property to the Plaintiffs.

7. The initial burden is on the Plaintiff to plead and prove the readiness and willingness to perform their part of the contract as contemplated by Section 16(c) of the Specific Relief Act. In this regard there is pleading in the plaint about readiness and willingness of the

Plaintiffs to perform their part of the contract. There are specific pleadings in respect of the amounts being paid to the Defendant from time to time and that the Plaintiffs having approached to the Defendant with the remaining amount requesting him to accept the said. There is no cross-examination of the Plaintiffs' witness in order to indicate that the Plaintiffs were not ready and willing to perform their part of the contract. Apart from this it is pertinent to note that the facts of the case by itself indicate that as per the claim of the Defendant he approached to the Plaintiffs for advancement of loan and which indicates their sound financial condition. If the Plaintiffs were in position to advance loan to the Defendant, question of taking doubt about their readiness does not arise. Their willingness could be seen from the approach to Defendant from time to time and on refusal by Defendant, filing of suit immediately. Evidence led by the Plaintiffs indicates that the willingness is also shown by them approaching the Defendant for accepting the balance amount of consideration and to execute sale deed. Thus the finding of Trial Court confirmed by the Appellate Court with regard to the readiness and willingness of the Plaintiffs to perform their part of the contract is consistent with evidence on record and hence required no interference.

8. The Defendant claims that Plaintiffs made false statement about payment of Rs.2720/- to Defendant, as they have failed to prove the same and relying upon judgment in case of ***Major Gen. Darshan***

Singh (D) By Legal Representatives and Another (supra) and sought dismissal of suit. In the instant case, the pleadings in the plaint are clear to say that amount of Rs.2720/- is paid to Defendant but receipts thereof are not available. In the facts of the case, the said statement cannot be construed as false, merely because Plaintiffs failed to prove the said payment. The Trial Court has directed Plaintiffs to pay balance consideration to Defendant including said amount. Thus, it can not be said that Plaintiffs filed suit on the basis of false statement. The judgment cited supra therefore would not help Appellant in any manner.

9. On the point of limitation it is sought to be contended on behalf of the Defendant that the exact date of denial by the Defendant to execute the sale deed has not been proved. In order to decide the said issue it would be relevant at first instance to take into consideration the overall facts and circumstances of the case. Admittedly, Defendant was liable to pay more than Rs.7000/- to City Municipality, Beed. The said amount was sought to be recovered as land revenue. Provisional auction sale was effected on 27/05/1963. The agreement to sale i.e. Isar Pavti came to be executed on 23/04/1964. It is thereafter Defendant had taken exception to the said order of provisional sale before the Authority and finally challenge thereto was made before this Court in Civil Revision Application No. 1678/1968. This Court by judgment dated 28/02/1972 set aside the auction sale, however, directed Defendant to deposit the

amount with interest at the rate of 12% payable to the auction purchasers. The possession was directed to be restored to the Defendant only on the payment of the said amount along with interest. It is admitted fact even when the suit was filed, the possession was not obtained by the Defendant of the suit properties.

10. In the light of this facts, the Plaintiffs have specifically pleaded about they approaching to the Defendant from time to time to accept the balance consideration and Defendant avoided the same. It is averred that on 23/10/1979 when the Defendant for the first time refused to execute the sale deed, suit came to be filed on 10/12/1979 seeking decree of specific performance. On behalf of the Plaintiffs one of Plaintiff came to be examined. He has stated about the Defendant being approached earlier and finally refusing to execute the sale deed. In the cross-examination nothing could be elicited to disbelieve the statement of the Plaintiffs.

11. As far as the exact date of refusal is concerned, the same may not be crucial in each case for establishing a cause of action. Needless to say that the Court is required to take into consideration as to when the refusal is made and the circumstances in which it is made so also consequences thereof rather than deciding the exact movement of the refusal would be relevant. As recoded above, there were proceedings going on before the High Court which were not informed by the

Defendant to the Plaintiffs and that Plaintiffs were time and again approaching to the Defendant for accepting balance consideration and the Defendant avoided to do so, refusal on the part of Defendant before filing of the suit to execute the sale deed deserves to be accepted. In the facts of the case it cannot be said that the Plaintiffs have deliberately not approached to the Court for seeking decree of specific performance earlier. Needless to say that the time is not essence of the contract in case of sale of immovable property and that there is no specific time limit fixed for execution of the sale deed. In the peculiar facts of the case, it could not have been possible even for Defendant to fix a specific date for execution owing to the pendency of the proceedings initiated by him challenging the provisional sale and thereafter the confirmed sale. Having regard to the overall facts and circumstances of the case, this Court finds no reason or justification to dismiss the suit being beyond limitation.

12. The pleadings of the parties and evidence on record and on considering overall facts of the case, the case of Plaintiffs becomes more probable than of the Defendant. The Hon'ble Apex Court has held that time and again unless the findings are perverse, in Second Appellate Court would not get jurisdiction to cause interference therein. In case of *Damodar Lal vs Sohan Devi And Ors*, AIR 2016 SC 379, the Hon'ble Supreme Court has held that the High Court in Second Appeal is

not justified in upsetting the findings which are pure questions of fact. Further observed that even if the findings of fact is wrong, that by itself will not constitute a question of law. According to the Hon'ble Supreme Court the wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises and the safest approach on perversity is the classic approach on the reasonable man's inference on the facts. If the conclusion on the facts in evidence made by the Court is possible, there is no perversity. In the facts of the case, this Court also does not find any perversity in the findings recorded by the First Appellate Court. As a result of which in substantial questions of law framed and recorded herein above, answer in negative. As a result of this discussion, there is no reason or justification to cause interference in the impugned judgment and order. Hence, Appeal stands dismissed. Pending Civil Application, if any, stands disposed of.

(R. M. JOSHI, J.)

LATER ON

13. Learned Counsel for the Appellants seeks continuation of interim relief for a period of six weeks.

14. Learned Counsel for contesting Respondents opposes the said request.

15. Since the interim relief is in force since 1995, the same is extended for a period of six weeks.

(R. M. JOSHI, J.)

ssp