



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

3 SECOND APPEAL NO. 346 OF 1994

CHINDHABAI KISAN GUJAR AND OTHERS  
**VERSUS**  
THAGUBAI KASHIRAM PATIL AND OTHERS

Mr. B. R. Warma, Advocate for the appellants  
Mr. S. S. Shete h/f Mr. R. M. Deshmukh, Advocate for respondent nos.1  
to 3.

**CORAM : R. M. JOSHI, J.**

**DATE 22<sup>nd</sup> JANUARY, 2025**

**PER COURT :-**

1. This second appeal takes exception to the concurrent findings recorded by the trial Court in R.C.S. No. 83/1977 and confirmed by the first Appellate Court in R.C.A. No. 243/1989.
2. Parties are referred to as Plaintiff and Defendants for sake of brevity.
3. The suit is filed by the plaintiffs for specific performance of the contract on the basis of the agreement to sale dated 23.05.1974 executed by the defendants in respect of the suit property. It is their case that there was agreement between the parties for the sale of the suit land for total consideration of Rs. 1300/-. Out of said amount a sum of Rs. 800/- was paid by way of earnest money. The balance

consideration of Rs.500/- was to be paid at the time of execution of sale deed. Since the defendants have failed to execute the sale deed in favour of the Plaintiff, R.C.S. No. 83 of 1977 came to be filed.

4. Defendants filed written statement and accepted the factum of execution of agreement, however, denied that they intended to sell the property. It is claimed that the said transaction was by way of the security towards the money advanced by the plaintiffs to the defendants.

5. Both sides led evidence. On remand by the first Appellate Court in the earlier round of the litigation, further evidence was allowed to be led by them before the trial Court. The learned Trial Court decreed the suit and directed decree of specific performance. This judgment came to be confirmed in the R.C.A. No. 243/1989.

6. Learned counsel for the appellants/original defendants sought to canvass that this is a case of "unconscionable bargain". It is his submission that a land admeasuring about 10 acre cannot be sold at the rate of Rs.1,300/- and therefore, the decree of specific performance cannot be granted. It is his further submission that plaintiffs have failed to prove the readiness and willingness to perform is part of the contract and as such even on that ground decree could not have been passed.

7. Learned counsel for the respondents supported the impugned judgment and decree.

8. Though it is sought to be argued on behalf of the learned counsel for the defendants that this is case of “unconscionable bargain” and since the same is not considered by both Courts below, it becomes a substantial question of law. However, in order to call this as substantial question of law there ought to have been pleadings at first instance in written statement that it is a sale transaction and it was “unconscionable bargain” meaning thereby defendants either did not know the actual price of the land or was forced to settle the consideration at lesser price than it could have fetch in the market at relevant time.

9. Perusal of the written statement does not make any whisper in this regard. On the contrary, the transaction is said to be not of sale but security towards money lending. Once it is admitted by the defendants about the execution of agreement to sale and the defence is taken that this is not towards the sale transaction, but was towards the security of the loan transaction, question of going into the issue of “unconscionable bargain” does not arise.

10. Apart from this, the perusal of the evidence on record indicate that in the cross-examination of the plaintiffs’ witness it was

specifically suggested to the witness that the price of land could be at the most Rs.1500/- to 1700/-. Similarly evidence of defendants' indicates that the land was a poor quality. Pertinently, there is absolutely no evidence on record by the defendants to show that price of the land was much higher than one agreed between the parties. In so far as findings recorded by both Courts below on the point of readiness and willingness of Plaintiff, the same are in consonance with evidence on record.

11. Having regard to above facts, this Court in exercise of the power under Section 100 of the Code of Civil Procedure cannot be called upon to reappreciate the evidence on record different findings than the one recorded by the Courts below. Thus, this Court finds no substantial question being involved in this appeal.

12. Hence, appeal stands dismissed.

(R. M. JOSHI, J.)

ssp