



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

SECOND APPEAL NO. 99 OF 1996

Nanabhau S/o. Kashinath Shendge
Age-36 years, Occ : Agriculturist,
R/o Khaparpangri, Tq. and Dist. Beed.

..APPELLANT

-VERSUS-

Bapu S/o. Lakhu Palkar
Age – 37 years, Occu. Agriculturist,
R/o khaparpangri, Tq. and District Beed.

..RESPONDENT

...
Advocate for the appellant : Mr. V.J. Dixit
APP for Respondent- State : Mr. Sachin Deshmukh i/b Mr. S.S. Dambe

...

CORAM : ROHIT W. JOSHI, J.

DATE : 12.03.2025

JUDGMENT :

1. The present Second Appeal is admitted vide order dated 12.04.1996 on the following substantial questions of law :-

“I) Whether the Court below was right in arriving to the conclusion that, the transaction of the parties appeared to be of sale and sale out, still the plaintiff is entitled for reconveyance of the property ?

II) Whether the respondent-plaintiff was entitled to reconveyance of the property was a sham document or the sale deed executed in favour of appellant was out

and out sale ?

III) The Lower Appellate Court has committed a serious error in arriving to the conclusion that, under Section 92 of the Evidence Act, the document is required to be read only, and no oral evidence is permissible except the proviso permits.

IV) Whether the respondent-plaintiff has established that, he has mortgaged the suit land to the present appellant for Rs.4,000/- and he has executed the Sale Deed, dated 30.6.1983 for the security of repayment of Rs.4,000/- ?

V) Whether the Lower Appellate Court was right in coming to the conclusion that, on repayment of Rs.4,000/- within the period of 5 years, the property was to be re-conveyed in favour of the plaintiff as per Kararnama executed on 30.6.1983 ?

2. During the course of hearing of appeal on 11.03.2025, additional issue had cropped up as regards Section 16(c) of the Specific Relief Act. The learned Advocate for the appellant argued that in the event this Court was not inclined to accept his contention with respect to the sale deed in question being a outright sale and further that the agreement for reconveyance executed on the same day was not legally

enforceable, the issue as to whether the plaintiff was ready and willing to perform his part of the contract should also be decided. The learned Advocate for the respondent agreed for the same. With the consent of the parties, an additional substantial question of law in this regard was framed. In this backdrop, parties were put to notice that following additional substantial question of law will be decided by the Court in addition to the substantial questions of law on which the appeal was admitted. Additional substantial question of law decided to be framed during the course of hearing on 11/03/2025 :-

ADDITIONAL SUBSTANTIAL QUESTION OF LAW

“Does the plaintiff was always ready and willing to perform his part of contract ?”

3. It needs to be mentioned that although it was indicated that the above additional substantial question of law would be framed, it was not formally framed on 11.03.2025. It is reiterated that the parties were put to notice that the question will be framed and would be decided immediately.

4. The appellant in the present second appeal is defendant in Regular Civil Suit No.503/1986. The respondent had filed a said Civil suit for reconveyance of sale and possession of the suit property. The said suit was dismissed by the learned 2nd Joint Civil Judge, Senior

Division, Beed, vide judgment and decree dated 23.12.1988. The respondent, the original plaintiff filed appeal challenging dismissal of the suit, vide Regular Civil Appeal No.87/1989. The said appeal came to be allowed vide judgment and decree dated 08.02.1996 passed by the learned First Additional District Judge, Beed.

5. Aggrieved by the judgment and decree passed by the learned First Appellate Court, the original defendant has filed the present second appeal, which came to be admitted on 12.04.1996 on the substantial questions of law enumerated above. In addition to the said questions one more question is framed in the circumstances mentioned above.

6. The facts of the case, in brief, are as under :-

The plaintiff has executed a sale deed dated 30th June, 1983 in favour of the defendant with respect to three agricultural lands owned by him bearing Gat Nos.77, 80 and 115 situated at village Khaper Pangri, Tq. & Dist. Beed for consideration of Rs.4,000/- . It is the case of the plaintiff that he was in need of hand loan of Rs.4,000/- and had approached the defendant for securing the loan. The plaintiff has contended that the defendant agreed to offer the loan on the condition that he would execute the sale deed with respect to the suit properties in his favour towards security of the loan amount. The

plaintiff contends that he had agreed for the condition put-forth by the defendant and executed sale deed with respect to the suit properties in his favour on 30.06.1983 in lieu of loan amount of Rs.4,000/-, which is mentioned as sale consideration in the sale deed. The plaintiff has further contended that it was agreed between the parties that the plaintiff shall refund the loan amount of Rs.4,000/- to the defendant without interest within a period of five years from the sale deed and upon such payment, the defendant shall reconvey the suit properties to the plaintiff. The plaintiff also states that the parties had agreed that the plaintiff shall place the defendant in possession of the properties so as to enable him to take crops from the suit properties, which are agricultural lands in lieu of interest to be paid on the loan amount. The plaintiff contends that the aforesaid conditions regarding right to reconveyance upon repayment of amount was recorded in a separate document titled as "*Kararnama*" (Agreement), which was executed on the same day i.e. on 30.06.1983 simultaneously with execution of the sale deed. The plaintiff contends that somewhere around August, 1986, he had approached the defendant requesting to take Rs.4,000/- and execute the deed of reconveyance as agreed, however, the defendant avoided the plaintiff and rather approached the Tahsil office for mutation of his name in the revenue records. The plaintiff contends that he had issued legal notice dated 08.10.1986 through his Advocate requesting the defendant to reconvey the property wherein he had

expressed his readiness and willingness to refund loan amount of Rs.4,000/-.

7. The defendant upon being served with suit summons appeared in the matter and opposed the suit by filing his written statement. It is the case of the defendant that the sale deed dated 30.08.1983 is absolute sale and not a loan transaction as alleged by the plaintiff. The defendant has contended that the agreed sale consideration of Rs.7,000/-, however, since the defendant did not have the entire amount of sale consideration with him, he had requested the plaintiff to execute the sale deed on payment of Rs.4,000/- and to take the balance sale consideration of Rs.3,000/- within a period of around 15 days. The defendant contends that the plaintiff agreed for this, subject to condition that defendant will sign a blank stamp paper as security for the balance sale consideration of Rs.3,000/-. The defendant contends that this was an oral understanding between the parties. The defendant has stated that since the plaintiff was to pay stamp duty and registration charges for the sale deed, sale consideration of Rs.4,000/- only was mentioned in the sale deed, as suggested by plaintiff.

8. Based on the rival pleadings, the learned trial Court framed issues in the matter on which the parties led evidence. The plaintiff has examined himself and one Uttam Dhanwade, attesting witness of the

agreement of reconveyance dated 30.06.1983. As against this, the defendant examined himself and one Eknath Chavan, attesting witness to the sale deed dated 30.06.1983.

9. After recording evidence, learned trial Court proceeded to hear arguments of the respective Advocates. The learned Trial Court has dismissed the suit disbelieving the evidence led by the plaintiff. The learned Trial Court has disbelieved the agreement of reconveyance dated 30.06.1983 at Exhibit-22. As stated above, the learned First Appellate Court has reversed the judgment and decree passed by the learned Trial Court and has granted decree for reconveyance of suit properties in favour of the plaintiff.

10. Substantial questions of law framed vide order dated 12.04.1996 while admitting the appeal are interlinked and therefore, it will be appropriate to decide same together.

11. Shri V.J. Dixit, the learned Advocate for the appellant has strenuously argued that the sale transaction was one of the absolute sale and not mortgage by conditional sale. He has referred to Section 58(c) of the Transfer of Property Act to contend that since the condition of reconveyance is not included in the sale deed itself, the sale deed cannot be said to be a mortgage by conditional sale. He has placed

reliance on a judgment of this Court in the matter of ***Laxman Krushna Sangade Vs. Hari Bhima Pohade*** reported in ***AIR 2024 Bom 8*** and judgment of the Hon'ble Supreme Court in the matter of ***Umabai and another Vs. Nilkanth Dhondiba Chavan (Died) by Lrs. and another*** reported in ***2005(6) SCC 243*** in support of his contention.

12. The learned Advocate for the respondent does not dispute the contention that when the agreement for reconveyance of the property sold is not recorded in the sale deed itself, the transaction will not fall within the definition of mortgage by conditional sale as defined under Section 58(c) of the Transfer of Property Act. However, he contends that such transaction recorded in two separate documents is in the nature of mortgage although, it does not strictly fall within the meaning of mortgage by conditional sale. He further contends that the agreement of reconveyance is legally enforceable.

13. The legal submission made by the learned Advocate for the appellant is sound and cannot be doubted. A perusal of proviso to Section 58(c) of the Transfer of Property Act leaves no doubt that the condition of reconveyance must be embodied in the sale deed in order to term the sale deed as a document of mortgage by conditional sale. Apart from this, the sale must not be a genuine sale. It must be an ostensible sale, meaning thereby that the real relationship between the

parties should not be of vendor and vendee but of borrower and lender.

14. However, that by itself will not be end of the matter. In a given case, a borrower and a lender may mutually agree that sale deed with respect to property must be executed in order to secure the loan amount and simultaneously they may also agree that the vendor-borrower shall have right to repurchase the property upon repayment of loan amount. When such condition is included in the sale deed itself, the transaction is one of mortgage by conditional sale. However, when this condition of repurchase is not enumerated in the sale deed itself, but is recorded in a separate document, the document does not fall within the meaning of mortgage by conditional sale and can at best be described to be a outright sale transaction coupled with an agreement to reconvey the property to the vendor. Such agreement for reconveyance is enforceable at the behest of the borrower/vendor. However, when condition of reconveyance is incorporated in the sale deed itself the rights of parties, including the right of borrower/vendor to redeem mortgage will be governed by provisions of Chapter IV and particularly right to redeem the mortgage will be governed by Section 60 of the Transfer of Property Act, whereas, if the condition of reconveyance is included in a separate document, the right to repurchase the properties after repayment of the amount will be governed by Chapter II of the Specific Relief Act, which provides for

specific performance of contracts. Apart from this, the limitation prescribed for both suits will be different. Another distinguishing feature that must be noted is that right to redemption is a right of the mortgagor and specific performance is a matter of discretion of the Court.

15. Although, the learned Advocate for the appellant has made strenuous submission as regards the nature of transaction and has urged that the transaction between the parties was one of outright sale and not of mortgage by conditional sale, and therefore, the plaintiff was not entitled to reconveyance of the suit properties in his favour, I am afraid, although the transaction between the parties is not a mortgage by conditional sale, nonetheless, independent agreement of reconveyance executed between the parties is a valid agreement, which is enforceable in law. The legal position in this regard is well settled by catena of judgments, including one in the matter of ***Smt. Indira Kaur and others and Shri Sheo Lal Kapoor*** reported in ***AIR 1988 SC 1074*** relied upon by the learned Advocate for the respondent. The learned Advocate for the appellant has placed strong reliance on the judgment of this Court in the matter of ***Laxman Sangade (supra)***. The learned Single Judge of this Court has referred to a judgment of the Hon'ble Supreme Court in the matter of ***Umabai and another Vs. Nilkanth Dhondiba Chavan(Dead) By Lrs. And another*** reported in ***(2005)6 SCC***

243 explaining the difference between a mortgage by conditional sale and a sale deed coupled with agreement of reconveyance. The said judgment also states that although in cases where the condition of repurchase is incorporated in a separate document, the transaction is not a mortgage by conditional sale, but a sale with condition of repurchase, it is further held that such an agreement to sell merely confers a personal right which can be enforced according to the terms and conditions of the said agreement of reconveyance. Thus an agreement of reconveyance executed in favour of vendor by the vendee is enforceable in law.

16. In view of the aforesaid, the contention of the learned Advocate for the appellant that agreement of reconveyance is not legally enforceable is rejected.

17. The learned Advocate for the appellant has also contended that the prayer for reconveyance is made treating the transaction between the parties as a mortgage and since the transaction is not one of mortgage, the suit should be dismissed. The contention is liable to be rejected having regard to the pleadings and prayer in the plaint. The plaintiff has pleaded that he had approached the defendant for loan of Rs.4,000/- and had executed a sale deed as security towards the loan amount on insistence of defendant. He has simultaneously stated that

parties had agreed that the property will be re-conveyed once loan amount is refunded within a period of five years. He has averred that he had approached the defendant for reconveyance and suit was required to be filed since defendant did not honour his commitment. The prayer in the suit is for directions to the defendant to reconvey the suit property upon receiving the amount of Rs.4,000/- as per the agreement of reconveyance at Exhibit-22. It is already held that agreement of reconveyance is enforceable in law, and is regulated by provisions of Specific Relief Act. The prayer in the suit is akin to a prayer for specific performance. It is already held above that the plaint averments and evidence on record are sufficient to satisfy the ingredients of Section 16(c) of the Specific Relief Act. In that view of the matter, the objection raised by the learned Advocate for the appellant is rejected.

18. In the present case, the condition of reconveyance is included in a separate document, and therefore, the controversy will have to be adjudicated having regard to the provisions of Specific Relief Act. However, the appellant has questioned the veracity of agreement of reconveyance dated 30.06.1983 itself, and therefore, before dealing with the provisions of Specific Relief Act, it is necessary to decide the issue pertaining the veracity of the said agreement.

19. The signature of the parties and attesting witnesses to the agreement of reconveyance are not in dispute. Whereas it is a case of the plaintiff that the said agreement was executed simultaneously with the sale deed, the case of the defendant is that the agreed sale consideration was Rs.7,000/- and not Rs.4,000/- as is mentioned in the sale deed, and therefore, towards security of the balance sale consideration of Rs.3,000/- he had given a blank stamp paper duly signed by him and attesting witnesses to the plaintiff as a security for the unpaid sale consideration. The defendant thus disputes due execution of the agreement of reconveyance dated 30.06.1983. The case of the defendant is that this blank stamp paper bearing signatures was misused to prepare a false document of agreement of reconveyance.

20. The contention of the learned Advocate for the appellant is that if there was any intention to reconvey the property, the said condition could have been incorporated in the sale deed itself and there was no need to execute any separate agreement for that purpose.

21. As against this, the contention of the learned Advocate for the respondent is that the agreement of reconveyance is duly proved and the contention that signatures on blank stamp paper were obtained and the stamp paper was misused to create a agreement does not

inspire confidence. He contends that it is unbelievable that a purchaser, rather a lender, will sign a blank stamp paper and hand it over to the seller or borrower. He further contends that the contention raised by the appellant cannot even be looked into in view of statutory bar under Section 91 of the Evidence Act, which provides that oral evidence cannot led contrary to the contents of the written document.

22. The learned trial Court has disbelieved the agreement of sale dated 30.06.1983. The learned Trial Court has held that one of the witnesses has signed the agreement in a different ink than the executors and another witness and the attesting witnesses on the sale deed and agreement of sale are different persons. On this basis, the agreement of sale is disbelieved. As against this, learned Appellate Court has held that the document is a genuine document. The learned First Appellate Court has considered the evidence of the parties on this aspect. It has referred to the document itself and held that the document is validly executed agreement.

23. The case of the appellant/defendant with respect to the agreement of sale is one of fraud. The appellant contends that the agreed sale consideration was Rs.7,000/- as against Rs.4,000/-, mentioned in the sale deed and that at the insistence of respondent-original plaintiff, the blank stamp paper duly signed was handed over

to him by the appellant-defendant in lieu of security for the balance sale consideration of Rs.3,000/-.

24. At the outset it needs to be mentioned that the case set up by the appellant-defendant is contrary to the terms of a written document. The sale deed specifically records that the agreed sale consideration is Rs.4,000/-. The appellant-defendant has raised a contention which is contrary to the written document. The contention needs to be rejected at the outset in view of Section 91 of the Indian Evidence Act, which states that when the terms of a contract or disposition of property are reduced into writing in a document no evidence shall be given in proof of the terms of such contract or disposition of property, except the document itself. Section 92 further fortifies that evidence of any oral agreement shall not be admissible in order to contradict, vary and or subtract anything from what is mentioned in the document recording a contract or a transaction for disposition of property. In that view of the matter, the contention raised by the appellant-defendant that the sale transaction was for a consideration of Rs.7,000/- cannot be entertained at all since the sale consideration of Rs.4,000/- is mentioned in the sale deed.

25. This submission that the sale consideration is Rs.7,000/- as against Rs.4,000/- mentioned in the agreement is foundation of the

case of the appellant- defendant for putting his signature on the stamp paper on which disputed agreement of reconveyance is written. Since the theory that agreed sale consideration was Rs.7,000/- cannot be entertained, it is difficult to accept the explanation offered by the appellant-defendant for handing over the blank stamp paper duly signed by him and the attesting witnesses.

26. It is well settled that burden of proving fraud is always on a person, who alleges it. The burden of proof is heavy. In order to make out a case of fraud, the party alleging fraud must allege a fraud with proper and precise pleading with all material particulars and must prove the facts pleadings by leading cogent evidence strictly in accordance with the pleading during the course of evidence. It will be pertinent to mention that the case of fraud of handing over blank stamp paper duly signed is pleaded in paragraph no.7 of written statement. Perusal of the paragraph no.7 demonstrates that as per the defendant, he had purchased a stamp paper of Rs.5/- and handed it over to the plaintiff by putting his signature towards security of alleged balance sale consideration of Rs.3,000/-. The pleading of the defendant is completely silent with respect to signature of the attesting witnesses. There is no explanation whatsoever in the written statement as regards the manner in which signature of attesting witnesses had appeared on the said document. However, as stated above, signature of attesting

witnesses is not in dispute. In my considered opinion, it was necessary for the defendant to plead as to how the signature of the attesting witnesses have appeared on the document.

27. Apart from this, it is also necessary to mention that the manner in which the document is written does not indicate that any attempt is made to adjust the signatures of the executants and attesting witnesses. The document is handwritten. The lettering is of the same size all throughout. The spacing between two lines is also maintained all throughout the document. It will be pertinent to mention that signatures of the executants and attesting witnesses are made at the extreme bottom side of the stamp paper. Normally, signatures of the executants and attesting witnesses, if obtained on black stamp paper, will not appear at such places. Perusal of the document does not indicate that signatures were obtained on blank paper and then the contents were written on it.

28. It will be pertinent to mention here that Mr.Ganesh Sukhdev and Mr.Eknath Baburao Chavan, who are attesting witnesses to the sale deed have also signed the agreement of reconveyance at Exhibit-22. There are two other attesting witnesses to the said agreement apart from the above two witnesses. It will be pertinent to mention here that this Eknath Baburao Chavan is examined as a

witness by the defendant. This witness has admitted his signature on the agreement of reconveyance at Exhibit-22 in his examination-in-chief itself, however, with a rider that the stamp paper was blank when he has signed it. This statement which has come in the examination-in-chief of defendant's witness does not find place in the written statement. The written statement speaks about signature of defendant alone on the blank stamp paper. Perusal of cross-examination of this witness further indicates that he is commerce graduate and was working as supervisor with District Milk Foundation at Beed. He is maternal father-in-law of the defendant. It is difficult to conceive that he had signed blank stamp paper as stated by him in his deposition. The findings recorded by the First Appellate Court in this regard cannot be said to be perverse. Rather, the findings by the learned Trial Court disbelieving the Exhibit-22 is based on conjectures and surmises. The learned Trial Court has also not adverted to the fact that the case of fraud was also not properly pleaded by explaining the manner in which signature of attesting witnesses had appeared on the said document, particularly, the signature of DW-2 Eknath Chavan. The contention of the appellant that the findings with respect to the genuineness of document as recorded by the First Appellate Court are perverse and/or contrary to the evidence on record is, therefore, rejected. Findings recorded by the learned First Appellate Court as regards to veracity and genuineness of agreement of reconveyance at Exhibit-22 are just and

proper.

29. It will be pertinent to mention here that a specific suggestion is given by the defendant to the plaintiff during the course of cross-examination that the suit properties were given to the defendant for a period of five years to cultivate the said lands and to enjoy entire benefits from them for a period of five years. This suggestion in cross-examination is by itself a implied admission on the agreement of reconveyance. The cross-examination of a party to proceeding is conducted in order to challenge the veracity of the case set up by the party and also in order to establish the defence of the party conducting cross-examination. The suggestion that is given with respect to enjoyment of the properties for a period five years is probably with a view to suggest that suit was premature, in as much as, the plaintiff could not claim right to repurchase property before the period of five years. The said positive suggestion dents the case of fraud set up by the defendant.

30. The plaintiff contends that the sale deed was in fact a loan transaction. He has relied upon another document i.e. an agreement of reconveyance which was executed between the parties on the same day in order to establish his case. It will be pertinent to mention here that even if the transaction between the parties is held to be one of outright

sale and not of a advancement of loan, the agreement of reconveyance will be legally enforceable document. The defendant is leading oral evidence contrary to express term of a written document of conveyance of immovable property, which is prohibited under Sections 91 and 92 of the Evidence Act. The case of the defendant does not fall in any of the provisos to Section 92. The case of the defendant that agreed sale consideration of Rs.7,000/- and not Rs.4,000/- is therefore liable to be rejected. As against this, the case of the plaintiff is that the document at Exhibit-18 i.e. the sale deed should be read inconsequence with the agreement of reconveyance at Exhibit-22. The contention is that when both these documents are read together, the intention of the parties will be clear that the transaction was in a sense a mortgage, though may not be mortgage by conditional sale in its legal sense. In this context, it will be profitable to refer to the judgment of the Hon'ble Supreme Court in the matter of **Smt.Gangabai Ramvilas Gilda Vs. Smt.Chhabubai Pukarajaji Gandhi** reported in **(1982) 1 SCC 4**. Respondent in the said suit was original plaintiff, who had entered into agreement for loan with the appellant and had executed a nominal document of sale and rent note. It was her case, these documents never intended to be acted upon. Under sale deed, property was conveyed by the respondent to the appellant and as per the rent note, the respondent had to pay rent to the appellant. Respondent contended that this payment of rent was infact the payment of interest and the sale consideration was actually

the loan amount. The appellant filed a suit for recovery of rent in which the respondent took defence of the sale deed being sham document and real transaction between the parties is real loan transaction. In this backdrop, the appellant raised contention with respect to bar of admissibility of oral evidence with respect to the contents of a written statement of conveyance. The Hon'ble Supreme Court has repealed the contention and has held that the oral evidence led by the respondent was pertaining to the real nature of the transaction and such oral evidence could be led in view of provisos to Section 96. The relevant extract from the judgment of the Hon'ble Supreme Court is reproduced hereunder for ready reference :-

“11. The next contention on behalf of the appellant is that Sub-section (1) of Section 92 of the Evidence Act bars the respondent from contending that there was no sale and, it is submitted, the respondent should not have been permitted to lead parol evidence in support of the contention. Section 91 of the Evidence Act provides that when the terms of contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself. Sub-section (1) of Section 92 declares that when the terms of any contract, grant or other disposition of property, or any matter

required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms and the first proviso to Section 92 says that any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contradicting party, want or failure of consideration, or mistake in fact or law. It is clear to us that the bar imposed by Sub-section (1) of Section 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. The sub-section is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an

agreement but that some other agreement altogether not recorded in the document, was entered into between the parties. AIR 1936 70 (Privy Council). The Trial Court was right in permitting the respondent to lead parol evidence in support of her plea that the sale deed dated January 7, 1953 was a sham document and never intended to be acted upon. It is not disputed that if the parol evidence is admissible, the finding of the court below in favour of the respondent must be accepted. The second contention on behalf of the appellant must also fail.”

31. Another question that falls for consideration is as to whether the respondent/plaintiff has satisfied the ingredients of Section 16(c) of the Specific Relief Act in order to seek reconveyance of the suit property in terms of agreement at Exhibit-22. Section 16(c) provides that in order to seek specific performance of contract a plaintiff must plead and prove that he was always ready and willing to perform his part of the contract. Term ‘readiness’ implies capability to discharge obligations under the contract and term ‘willingness’ implies desire. It is well settled that form of pleading is not material and it is the contents that matter. It is also well settled that pleadings are required to be meaningfully interpreted and it is not necessary for a plaintiff in a suit for specific performance of contract to reproduce the words of Section 16(c) in the plaint.

32. With this backdrop, it is necessary to evaluate the averments in the plaint. The plaintiff has stated that he was hard pressed for money and had, therefore, approached the defendant for a hand loan. He states that the defendant agreed to give hand loan of Rs.4,000/- on the condition that the plaintiff should execute the sale deed with respect to suit properties in his favour towards the security of the loan amount. The plaintiff further states that the defendant had agreed to reconvey the property to the plaintiff if the loan amount was refunded within a period of five years. As regards the interest, it is the case of the plaintiff that defendant was to be placed in a possession of the suit properties and in lieu of interest, the defendant was to take yield from the agricultural lands till the date of repayment and reconveyance of the suit properties. The plaintiff has then stated that in view of the aforesaid understanding, agreement of reconveyance was executed between the parties on 30.06.1983, simultaneously with execution of the sale deed. The plaintiff has averred that in view of the agreement arrived at between the parties regarding reconveyance, the defendant did not mutate his name over the suit properties despite execution of the sale deed in his favour. The plaintiff then avers that in the month of August, 1986, he had approached the defendant offering to repay the loan amount of Rs.4,000/- and also requested to convey the suit properties to him as per the agreement. The plaintiff then states that the defendant tried to mutate his name, rather than reconvening

the suit properties. Plaintiff states that he had raised objection in the mutation proceeding initiated by the defendant. He states that he had issued a legal notice dated 08.10.1986 for specific performance of the reconveyance agreement. He then states that in view of refusal on the part of the defendant, he was constrained to file the suit seeking decree of reconveyance of suit properties in his favour as per the agreement. The suit is filed on 19.11.1986.

33. The above pleadings indicate that although the period of five years from 30.06.1983 was granted for reconveyance, the plaintiff approached the defendant for reconveyance in August, 1986 itself i.e. after a period of three years and two months. The pleading further indicates that on refusal of the defendant to reconvey the property and further in view of steps taken by him for mutation, the plaintiff promptly raised objection in the mutation proceedings and also issued legal notice on 08.10.1986. The legal notice dated 08.10.1986 did not yield any positive result as desired by the plaintiff, and therefore, he filed the suit on 19.11.1986.

34. Although it is not specifically stated in express words that the plaintiff was ready and willing to perform his part of the contract, it is apparent that the plaintiff had pleaded that he had approached the defendant offering to pay Rs.4,000/- for reconveyance of the suit

properties. The plaint averments also indicate that the plaintiff had promptly issued notice asking for reconveyance in the month of October, 1986 itself in view of the fact that the defendant avoided to do the needful and also took steps for mutation of the suit properties in his name. The plaintiff has also filed the suit promptly in November, 1986 itself. All these pleadings read and interpreted meaningfully clearly convey readiness and willingness on the part of the plaintiff. These pleading in my considered opinion are sufficient to satisfy the ingredients of Section 16(c) of the Specific Relief Act.

35. In that view of the matter, I am satisfied that the plaintiff has sufficiently pleaded and satisfactorily proved his readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act.

36. As regards the evidence, the plaintiff has reiterated that he had approached the defendant expressing his readiness to refund a loan amount of Rs.4,000/- and requested to execute the document of reconveyance and hand over possession of the suit properties to him. He states that the defendant refused to do the needful and also started proceeding for mutation in which he raised objection. The evidence then refers to the notice issued by the plaintiff asking for reconveyance. The plaintiff has made an express statement in the examination-in-chief

that he was ready to deposit the entire loan amount in the Court on the same day on which his deposition was being recorded. Perusal of the cross-examination will indicate that this statement made by the plaintiff in his examination-in-chief is not challenged in the cross-examination. Apart from this, there is no suggestion to the plaintiff in the entire cross-examination that he was not ready and willing to perform his part of the contract. It is now well settled that when a statement is made by a witness in his examination-in-chief and the statement is not challenged during his cross-examination, the party conducting cross-examination must be taken to have accepted and admitted correctness of the statement made by the witness in his examination-in-chief. The attempt in cross-examination is to challenge the veracity and genuineness of agreement of reconveyance and to establish that the sale deed was a outright sale deed and not mortgage by conditional sale. The defendant has not questioned readiness and willingness on the part of the plaintiff to perform his part of the contract.

37. The learned Advocate for the appellant has argued that even if the appellant has not cross-examined the plaintiff on the aspect of readiness and willingness, it is the duty of the Court to independently assess readiness and willingness in view of the statutory mandate of Section 16(c). He contends that it was necessary for the plaintiff to satisfy the ingredients of Section 16(c) and for that purpose,

the plaintiff ought to have produced documentary evidence in order to establish that he had a financial capability to make repayment of the amount, assuming that the agreement is enforceable in law. He further contends that the learned Appellate Court ought to have drawn adverse inference against the plaintiff for not producing documentary evidence to demonstrate his financial capability.

38. The contention is liable to be rejected, in view of the judgment of the Hon'ble Supreme Court in the matter of ***Basvaraj Padmavathi and another*** reported in ***2023(2) Mh.L.J. 645***, where it is held that since notice for production of documents relating to financial condition was not issued, adverse inference for not producing the document could not be drawn. It is also well settled that a plaintiff in a suit for specific performance need not necessarily show that he was always possessed with a funds to discharge his financial obligations. His over all conduct and behaviour is required to be seen in order to determine the readiness and willingness. It needs to be reiterated that the defendant has never challenged the readiness and willingness of the plaintiff and said contention is raised in the present appeal as a last ditch effort.

39. Another contention raised by the appellant is that the agreement of reconveyance was not adequately stamped in view of

Article 25 in Schedule-I of the Maharashtra Stamp Act and is therefore inadmissible in evidence. It is well settled that objection with respect to inadequate stamping of a document is required to be raised during the course of evidence before the document is admitted in evidence by marking exhibit. Admittedly such objection was not raised at the time of evidence. In that view of the matter, objection in this regard cannot be entertained for the first time in second appeal as has been held in the cases of *Marine Container Services (I) Pvt. Ltd. Vs. Rajesh Dhirajlal Vora* reported in (2001)4 Mh.L.J. 353 and *Sanjay Somani and another Vs. Vishnupant Shahane* (2007)6 Mh.L.J. 550.

40. Likewise, a contention raised by the learned Advocate for the appellant is that the document at Exhibit-22 is not admissible in evidence since it is not registered. The said contention is also liable to be rejected in view of proviso to Section 49 of the Registration Act. It will be pertinent to mention here that the appeal is not admitted on these points and these contentions were raised for the first time during the course of reply arguments canvassed by the learned Advocate for the appellant in response to oral documents advanced by the learned Advocate for the respondent.

41. In that view of the matter, the substantial questions of law framed above are answered as under :-

- (A) The sale deed at Exhibit-18 is outright sale deed and not a document of mortgage by conditional sale.
- (B) Although the sale deed at Exhibit-18 is outright sale, the agreement of reconveyance at Exhibit-22 is legally enforceable agreement, to be enforced in accordance with the provisions of the Specific Relief Act dealing with specific performance of contracts.
- (C) The case of the defendant that agreed sale consideration was Rs.7,000/- as against Rs.4,000/- mentioned in the sale deed at Exhibit-18 cannot be looked into in view of statutory bar under Sections 91 and 92 of the Indian Evidence Act. It is held that the case of defendant does not fall within any of the exception carved out in the provisos to Section 92 of the Indian Evidence Act.
- (D) The agreement of reconveyance at Exhibit-22 is not a forged or fabricated document as alleged by appellant-defendant.
- (E) The plaintiff has satisfied the ingredients of Section 16(c) of the Specific Relief Act for enforcement of the agreement of reconveyance at Exhibit-22.

42. In view of the aforesaid, the Second Appeal stands dismissed. The appellant/defendant shall bear the costs of the respondent/plaintiff all throughout.

[ROHIT W. JOSHI]
JUDGE

sga/