



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**910 SECOND APPEAL NO.457 OF 2021
WITH
CIVIL APPLICATION NO. 1178 OF 2025
IN SA/457/2021**

Ravindra Jagannath Bari

VERSUS

Dileepkumar Hirachand Jain

...

Advocate for Applicant : Ms.M. V. Narwade

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 28, 2025

FINAL ORDER :-

1. The appellant/original defendant filed this appeal impugning the judgment and decree dated 30.1.2020 passed in RCA no.1698 of 2012 by the District Judge, Jalgaon thereby upholding the judgment and decree dated 30.4.2011 passed by the Civil Judge S.D. Jalgaon in Special Civil Suit No.288 of 2008.

2. The respondent/plaintiff instituted the suit for specific performance of the contract on the basis of the agreement to sell dated 28.12.2007. It is contention of the plaintiff that defendant was owner of the suit plot. He agreed to sell the same to the plaintiff for consideration of RS.2.00 Lakh. Amount of Rs.1,90,000/- was paid by way of earnest money. The defendant executed an agreement to sell in presence of the witness and agreed that he shall execute sale-deed within 11 months after accepting the balance

consideration amount of Rs.10,000/-. However, defendant failed to comply his part of the contract. On 6.10.2008 the defendant issued a public notice showing his intention to sell out suit plots to third party. Plaintiff raised objection dated 9.10.2008, however, the defendant flatly denied execution of the agreement in favour of the plaintiff and refused to perform part of the contract. Plaintiff approached the defendant and requested to execute the sale deed, but he refused to do so. Consequently, the suit was instituted.

3. Defendant filed written statement and denied execution of the written agreement so also payment of earnest amount of Rs.1,90,000/-. According to the defendant, plaintiff had obtained his signatures on blank paper and created false document in the nature of agreement to sell. Trial court framed issues based on pleadings of the parties. Plaintiff recorded his evidence and examined two witnesses in support of his case. Defendant also entered into the witness box and recorded evidence of two witnesses. Trial Court, after evolution of the evidence, accepted case of the plaintiff and directed defendant to execute the sale-deed in pursuance to the agreement to sell by accepting balance of consideration amount.

4. Aggrieved defendant approached the appellate Court. However, the appeal came to be dismissed upholding the decree passed by the Trial Court.

5. Smt. Narwade, learned advocate appearing for the appellant submit that the decree passed by the trial court

and confirmed by the appellate court is perverse. The defendant has taken specific plea that agreement to sale is a fabricated document, but such contention is not appreciated. She would further point out that the suit property is now part of the reservation as per development plan published under the MRTP Act and earmarked for the particular purpose. As such, the plaintiff is not entitled to claim decree for specific performance.

6. Having considered the submissions advanced, it can be observed that the plaintiff has placed on record written agreement to sell. Defendant has not denied his signatures on the document. However, endeavors to put a case that his signatures were obtained on blank paper. Plaintiff's witness PW 2 Nitin Varma and Madanlal Jain supports case of the plaintiff. They proved that the defendant has signed written agreement. The trial court as well as appellate court on appreciation of the evidence accepted case of the plaintiff that defendant has executed the agreement. Courts have concurrently observed that the defendant is raising inconsistent stand and his evidence is not reliable. No perversity can found in approach of the courts below in accepting case of the plaintiff as to execution of the agreement of sale. Both the Courts have recorded findings that the plaintiff was always ready and willing to perform contract. As such, there is compliance of section 16 (c) of the Specific Relief Act.

7. Smt. Narwade, learned advocate appearing for the appellant points out that additional evidence was placed before the appellate court to show that as per development plan suit

plot is reserved for school/play ground and therefore it is not possible to execute the sale-deed by converting the property into NA. The appellate court considered aforesaid aspect and observed that assuming that the property is earmarked for specific purpose in the development plan, that itself cannot be a ground to refuse the specific performance if the plaintiff is otherwise eligible. There cannot be dispute about the legal proposition so that there is no embargo for transfer of the land although it is part of the development plain and reserved for the specific purpose. Reservation is for particular development as proposed but that itself does not prevent transfer of the property.

8. In that view of the matter, no substantial question of law is made out in this appeal. The, Second Appeal stands **dismissed**. In view of dismissal of the Second Appeal, Civil Application also stands **dismissed**.

(S. G. CHAPALGAONKAR, J.)

...

aaa-