



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

SECOND APPEAL NO. 342 OF 2012

Asharafoddin S/o. Gayasoddin Shaikh
Age: 65 years, Occu.: Labour,
C/o. Meher Furniture,
Nageshwarwadi, Near Saraswat Bank,
Aurangabad-431001.

.....APPELLANT
(Original Defendant)

VERSUS

1. Sk. Mohiyoddin S/o Riyazoddin (Expired)
L.R.: Imtiyaj S/o Mohiyaddin Shaikh
Age:28 yrs, Occu/: Labourer:
R/o. At-Darga Sharief, jalna, Tq. & Dist. Jalna.
2. Sk. Nasiroddin S/o. Riyazoddin
Age: 42 yrs, Occ.: Service:
R/o. At-Darga Sharief, Jalna, Tq. & Dist. Jalna
3. Sk. Jalaluddin S/o. Riyazoddin
Age:34 yrs, Occ.: Service & Agriculture:
R/o. At-Darga Sharief, jalna, Tq. & Dist. Jalna.
4. Sultana Begum W/o. Ahmed Jamal
Age: 36 yrs, Occ. Household;
R/o. At-Darga Sharief, Jalna, Tq. & Dist. Jalna.
(Died through Legal heirs)

.....RESPONDENTS
(ORIGINAL PLAINTIFFS)

- 4A. Shaikh Irfan Shaikh Mohasin,
Age: 29 years Occu: Laborer,
R/o Miya Sharif Darga, Old Jalna,
Tal & Dist Jalna.

- 4B. Fauziya Shahana W/o Shaikh Imtiyaz,
Age: 32 years Occu: household
R/o. Sanjay nagar, behind Old Bajaj Showroom,
Old Jalna, Tal & Dist Jalna.
- 4C. Shaikh Farah Naaz w/o Shiakh Imtiyaz
Age: 30 Years, Occu: household,
R/o. Milat Nagar (JalMahal), Old Jalna,
Tal & Dist Jalna.
- 4D. Shaikh Iqra Naaz w/o Shaikh Arbaz,
Age: 28 Years, Occu: household,
R/o. Aksa Park, near Shankar Nagar, Old Jalna,
Tal & Dist. Jalna

.....NON APPLICANT

(Respondents/Respondent No.1 to 4
Ori. Defendants No.1 to 4)

Mr. P. G. Patil And Mr. K. C. Khanapure (consent Obtained By
Mr. C. S. Tembhurnikar), Mr. M. M. Patil (beedkar), Advocate
for Appellant

Mr. A. S. Bajaj a/w Mr. Harshwardhan Bajaj, Advocate for
Respondent Nos.2 and 3

**WITH
CIVIL APPLICATION NO. 8628 OF 2022
IN SA/342/2012**

.....

CORAM : ROHIT W. JOSHI, J.

DATED : 03RD APRIL, 2025

ORAL JUDGMENT :-

. The present appeal is preferred by the original
defendant, who has suffered concurrent decrees for Specific
Performance of Contract. The appellant and respondent are

referred in the body of the judgment as defendant and plaintiff respectively. The plaintiff and defendant are real brothers. On 30.10.1993, an agreement of sale was entered between the parties to the appeal whereunder the defendant agreed to sell the suit property to his brother/the plaintiff. The said agreement is at Exhibit 36. The suit property is agricultural land bearing survey No.371/1 admeasuring 4 Acres, 38 Gunthas situated at village Jalna, Tahsil and District Jalna. The suit property was jointly owned by the two brothers; plaintiff and defendant and under the said agreement, the defendant agreed to sell his undivided share in the suit property to the plaintiff. The agreed sale consideration is Rs.75,000/-, out of which as per the recitals of the agreement a sum of Rs.60,000/- was paid by the plaintiff to the defendant on the date of execution of agreement. As regards possession, it is mentioned in the agreement that the plaintiff is already in cultivating possession of the suit property.

2. Since, the sale deed was not executed, the plaintiff filed suit for Specific Performance of Contract being Special Civil Suit No.124 of 1995, which was subsequently renumbered as

Regular Civil Suit No.507 of 2000. The defendant appeared in the suit and contested the same disputing execution of the agreement. Apart from this a contention was raised that the agreement was not enforceable since there was no clarity in the agreement with respect to the area of the property and the rate at which the property was agreed to be sold. Needless to mention that, since, execution of the agreement is disputed, receipt of part of sale consideration is also disputed by the defendant.

3. Before commencement of the evidence, the original plaintiff expired and therefore his son entered the witness box on behalf of himself and other legal representatives of the plaintiff. Apart from this, the legal representatives of plaintiff have also examined one of the attesting witnesses to the agreement and have examined one handwriting expert, Mr. Sanjay Kotwal in order to prove signature of the defendant on the agreement at Exhibit 36. As against this, the defendant has examined himself in the matter and has examined one handwriting expert, Mr. Ulhas Athale.

4. The learned Trial Court has believed the version of the plaintiff with respect to execution of the agreement and

payment of consideration. The learned Trial Court has elaborately dealt with the evidences of both the experts and has found that the evidence of Mr. Ulhas Athale, the expert examined by the defendant revolves only dissimilarities and does not deal with other aspects at all. Relying on commentaries of respected authors, the learned Trial Court has discarded the evidence of Mr. Athale and has placed reliance on evidence of Mr. Sanjay Kotwal, the expert examined by the plaintiff.

5. Apart from this, the learned Trial Court has placed reliance on evidence of the attesting witness examined by the plaintiff, who has indeed stood the test of cross-examination. Dissatisfied with the decree for Specific Performance, passed against him, the defendant preferred an appeal under Section 96 of the Civil Procedure Code being Regular Civil Appeal No.26 of 2005.

6. The learned First Appellate Court has confirmed the decree for Specific Performance of Contract. The learned First Appellate Court has considered evidence of both the experts as also the evidence of the attesting witness to arrive at a finding that the defendant had indeed entered into an agreement of

sale and has received sum of Rs.60,000/- towards part of the sale consideration.

7. Mr. Patil, learned Advocate appearing for the appellant has drawn my attention to the observations of the learned First Appellate Court particularly in paragraph 33 of the judgment to contend that alleged admission of the expert Mr. Ulhas Athale, on which reliance is placed by the learned First Appellate Court is completely perverse. He then draws my attention to the deposition of witness Mr. Athale to point out that there is no such admission by the said witness based on this. The learned Advocate contends that the finding recorded by the learned First Appellate Court is absolute perverse and therefore warrants interference in the present appeal.

8. I have read the relevant portion of deposition of the expert, Mr. Ulhas Athalye and have also read paragraph 33 of the judgment. Indeed the learned First Appellate Court has misread the evidence of the expert. The expert is referring to specimen signatures while he says that all the specimen signatures are by the same person. This statement is taken by the learned First Appellate Court to be an admission of genuineness of disputed signatures. There is no admission by

the expert with respect to the disputed signatures being made by the same person, who has made the specimen signatures or admitted signatures. In that view of the matter, indeed the observation in paragraph 33 is incorrect.

9. However, that is not the end of the matter. The learned Appellate Court has compared the photographs of signatures produced by both experts and has independently applied his mind which also his statutory obligation under Section 73 of the Indian Evidence Act and by such application of mind, the learned Appellate Court has held that the evidence of the witness examined by the plaintiff is more reliable. Speaking about the appreciation of evidence of both the experts, I find that the learned Trial Court has also very elaborately and succinctly dealt with the evidence of both the experts and has for cogent reasons, placed reliance upon the evidence of Mr. Sanjay Kotwal, who is the expert examined on behalf of the plaintiff. The findings of fact recorded by both the learned Courts are pure findings of fact and in my considered opinion, the findings are recorded upon appreciation of evidence properly. The findings cannot be said to be perverse by any sketch of imagination.

10. In that view of the matter, the appellant has failed to make out any substantial question of law on the point of execution of the agreement.

11. I also wish to state that the evidence of the attesting witness is also worth credit and sufficient to establish due execution of the agreement.

12. As regards the second contention pertaining the contract, not being enforceable due to uncertainty, it needs to be mentioned at the outset, that this point was not raised either before the learned Trial Court or before learned First Appellate Court and, therefore, will not normally give rise to any substantial question of law. However, in view of the submissions advanced by the learned Advocate for the appellant, I have perused the agreement with the able assistance of both the Advocates. The total area of the suit property is mentioned in the agreement. It is stated that the defendant/vendor has agreed to sell and the plaintiff/purchaser had agreed to purchase undivided share of the defendant in the said property. The number of the property and its area is mentioned. I do not find that the agreement suffers from any uncertainty to render it

unenforceable. It needs to be mentioned that the plaintiff and the defendant are real brothers and co-owners of the property. It is obvious that they were aware about right and interest of each other in the suit property as also about other details of the property. The agreement does not suffer from any uncertainty and cannot be said to be void on account of uncertainty under Section 29 of the Indian Contract Act.

13. The learned Advocate for the appellant has placed reliance on judgment of the Hon'ble Supreme Court in the case of *Nahar Singh Vs. Harnak Singh (1996) 6 SCC 699* to contend that if the description of property is vague and the property is not identifiable, suit for specific performance of contract cannot be decreed.

14. Having considered the said judgment, I find that the said judgment does not assist the appellants in any manner whatsoever in view of the reason that the agreement mentions the property number of the suit property with its area and the agreed sale consideration. The parties are related to each other as real brothers and co-owners of the suit property, they were fully aware about all the details and particulars of the property as also their respective right and interest over the

same.

15. In the light of the reasons mentioned above, I am of the considered opinion, that no substantial question of law arises in the appeal.

16. The appeal stands **dismissed** with no order as to costs.

17. Pending Civil Applications, if any, stand disposed of.

(ROHIT W. JOSHI, J.)

Rushikesh/2025