



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 157 OF 2025
WITH
CIVIL APPLICATION NO. 4510 OF 2025
IN SA/157/2025

1) Gavresh Popat Gade,
Age 43 years, occ. Education,
R/o. A/p. Malegaon Thadi
Tq. Kopargaon, Dist. Ahmednagar.

2) Manisha Popat Gade (deceased)
Through her legal heirs

2-A) Sunita Popat Gade,
Age 25 years, Occ. Household,
R/o. A/p. Malegaon Thadi
Tq. Kopargaon, Dist. Ahmednagar.

... **Appellants**

VERSUS

Ravindra Nivrutti Khond
Age 38 years, Occ. Agriculture,
R/o. Malegaon Thadi, Tq. Kopargaon,
Dist. Ahmednagar.

... **Respondent**

...

Advocate for Appellants : Mr. Ajinkya Kale i/by Mr. Talekar and Associates
Advocate for Respondent : Mr. P.B. Sirsath

CORAM : **SHAILESH P. BRAHME, J.**

DATE : **06.08.2025**

JUDGMENT :

Heard both the sides.

2. Appellants have approached this Court under Section 100 of the Code of Civil Procedure against the judgment and decree dated 19.10.2023 passed in Special Civil Suit No. 51/2012, by the Trial Court, which is confirmed by the lower Appellate Court on 06.02.2025 in Regular Civil

Appeal No. 59/2014. A decree for specific performance of contract, possession and injunction is under challenge.

3. The respondent-plaintiff had filed a suit for specific performance of contract, possession and injunction in respect of land Gat No. 177, measuring 60-Are ('suit land'). The appellants were owners of the suit land. For legal necessity, they executed agreement to sell (Exh. 39) in favour of the appellant on 27.12.2011. Out of the consideration amount of Rs. 9,00,000/- agreed between the parties an amount of Rs. 1,50,000/- was paid. A condition was incorporated in the agreement that appellant no. 1 was minor at that time and the appellant no. 2, his mother, was to secure permission of alienation from the District Court and thereafter sale-deed was to be executed on or before 25.05.2012. It was agreed that possession was to be handed over at the time of execution of sale-deed. The respondent was waiting for the compliance of the terms of the agreement. He called upon the appellants vide notice dated 11.07.2012 for necessary compliance. Thereafter suit was filed.

4. The appellants contested the suit denying the transaction of agreement to sell. It is contended that a minor's property could not have been alienated and there was no reason to do so. The respondent is stated to have taken disadvantage of helplessness of a poor lady and a fabricated document was prepared. The transaction is said to have been detrimental to the minor.

5. Parties adduced oral evidence. The agreement (Exh. 39) and notice (Exh. 25) are placed on record. Both the courts below concurrently held that agreement to sell was executed. There was ready and willingness. There was no hardship as other lands are available to the appellants. On this backdrop, a decree for specific performance of contract, possession and injunction was granted.

6. The learned advocate for the appellant Mr. Kale submits that

agreement (Exh. 39) is a contingent contract, which cannot be executed. For that purpose he places reliance on judgments in following matters:

- (i) **Urmila Devi Jain and others Vs. Ashok Kumar Manilal Gupta and others (First Appeal No. 20/2011 decided on 05.01.2024 , Patna High Court)**
- (ii) **Ramesh Chander Sharma Vs. Poonam Goyal and another; 2018 SCC Online P&H 7932**
- (iii) **Kasinath Panda and another Vs. Silla Satyabadi Patra and others; (2009) 2 AIR Jahr R(NOC 755) 251.**
- (iv) **Sati Oil Udyog Ltd and anr Vs. Avanti Projects and Infrastructure Ltd; (2010) 2 Gauhati Law Reports 512.**

7. The learned advocate would further submit that no agreement was executed and fraudulently the document was prepared taking disadvantage of feeble conditions of the appellant. It is further contended that no case is made out for readiness and willingness, as no evidence is adduced to show that balance consideration was available with the respondent. For that purpose, reliance is placed in the matter of **(1) C.S. Venkatesh Vs. A.S.C. Murthy; (2020) 3 Supreme Court Cases 280** and **(2) R. Shama Naik Vs. G. Srinivasiah; 2024 SCC OnLine SC 3586.**

8. It is further submitted that hardship to the appellants has not been taken into consideration. The decree is against Section 20(b) of the Specific Relief Act. It is further submitted that appellant no. 2 passed away and she is substituted by sister. The appellants are taking education and no land is available for them.

9. Per contra, learned counsel Mr. Sirsath for respondent submits that execution of the agreement was proved and the transaction was for the legal necessity of the minor. It is submitted that respondent has promptly deposited balance amount of consideration before the Trial Court itself. Both

the Courts below have rightly concluded on the point of readiness, willingness, as contemplated by Section 16(c) of the Specific Relief Act, 1963. It is further submitted that there are three lands valuable to the appellants and issue of hardship has been dealt with by the Courts below. It is further submitted that a conditional decree for specific performance of contract is permissible in law. For that purpose reliance is placed on the judgment of **Fatehji and Company and Anr Vs. L.M. Nagpal and Ors; AIR 2015 Supreme Court 2301.**

10. It is a matter of record that appellant no. 2 died during the course of the appeal and she is replaced by daughter Sunita. The appellant no. 1 has attained age of majority. During life time of his mother, no proceedings were filed before the District Court under Section 8 of the Guardians and Wards Act, soliciting permission for alienation. The agreement (Exh. 39) is impounded at the instance of the respondent.

11. I have gone through the agreement, which postulates following significant facts :

- (a) Appellants had land Gat Nos. 177 (suit land), 117 and 118.
- (b) Suit land was proposed to be sold for the legal necessity, for the development of agricultural lands.
- (c) Appellant no. 2 was to secure permission from District Court under the provisions of Guardians and Wards Act.

12. There is no dispute about the consideration and payment of earnest amount. The possession was agreed to be handed over at the time of execution of sale-deed. The contract between the parties is contingent. But it is not a law that conditional decree for specific performance of contract is impermissible to be passed. The conditional decrees are executable, subject to fulfillment of the conditions. Both parties have mutually agreed to enter

into sale transaction for legal necessity of the minor and a care is taken to secure permission of the competent Court. The condition cannot be said to be *per se* absurd, unexecutable and unconscionable.

13. The appellants did not comply first part of the agreement by approaching competent Court seeking permission for alienation. Though the defence of the appellants is of denial of the transaction, both the Courts below have held that the transaction and execution of agreement are proved. No reasons are forthcoming for non compliance of the condition on part of the appellants.

14. The appellants have placed reliance on the judgment of **Urmila Devi Jain(supra)**. In that case, the contract was subject to grant of probate from the competent Court. I have gone through para no. 8 to 10 of the judgment.

Further reliance is placed on **Ramesh Chander Sharma (supra)**. In that matter, the contract was subject to grant of licence.

Further reliance is placed on **Kasinath Panda (supra)** of learned Single Judge of Orissa High Court. The contract was subject to obtaining a sanction of the authority concerned.

15. The facts of all the cited judgments are distinguishable. I am not being persuaded by the judgments for the law laid down by the Supreme Court in the matter of **G.T. Girish Vs. Subba Raju (D) By L.Rs. And another; 2022(12) SCC 321**, makes it permissible to grant a conditional decree of specific performance. In this regard, respondent has also rightly placed reliance on the judgment of **Fatehji and Company and Anr (supra)** upholding that specific performance can be awarded subject to securing of permission.

16 The appellants have also placed reliance on the judgment of learned Single Judge of the Guahati High Court in the case of **Sati Oil Udyog Ltd**

(supra), to buttress that if the contract is not concluded then specific performance cannot be asked for.

17. I have already recorded that the conditions, for which the contract in the case at hand is branded as contingent is not unconscionable and such course is permissible as per law laid down by the Supreme Court referred above. Hence, the judgments cited cannot enure to the benefit of appellants. I find that both the Courts below are justified in granting a decree for conditional specific performance of contract in the present case.

18. The agreement (Exh.39) between the parties was executed on 27.12.2011. The respondent filed suit on 23.08.2012 and it was decreed on 19.10.2013. Hence amended provisions of Specific Relief Act are not applicable. Following is relevant provisions for readiness and willingness :

“16 (c) [who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation. - For the purposes of clause (c)-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.”

19. I have gone through the plaint, which discloses the averment of readiness and willingness. Respondent examined himself and a witness. Both the witnesses corroborated the pleadings. Nothing is elucidated from their cross-examination. The respondent issued notice (Exh. 25) calling upon the appellants to comply the terms of the agreement. Both the courts below rightly recorded the findings regarding readiness and willingness and

no perversity is found therein. It is not the requirement of the statute that respondent would disclose from the bank accounts that balance consideration was available. Appellant did not reply the notice. Neither of them filed proceedings before the District Court soliciting permission for alienation. The readiness and willingness of the respondent is apparent.

20. I have gone through the agreement, which is alleged to have been obtained by the respondent fraudulently, taking undue advantage of feeble condition of the appellant. On every page of the agreement there bear signatures of deceased appellant No. 1 Manisha Gade. She did not deny signatures on the agreement. There is no material on record to show that any fraud is played by the respondent and disadvantage of illiteracy or helplessness is being taken. She did not resort to file any complaint to police against alleged overt act. It has come on record that the earnest amount received by her was deposited in the bank. The evidence on record belies theory of deception.

21. The agreement to sell (Exh. 39) itself discloses that besides suit land, Gat No. 117 and 118 are available to the appellants. The lower Appellate Court has considered this aspect of the matter in paragraph no. 20 of the judgment. No hardship as contended by the appellants is proved. The appellants are unable to adduce any evidence to show that the consideration fixed between the parties was grossly inadequate. This aspect is considered by the Trial Court. No case is made out to cause any inference in the concurrent finding of facts.

22. The appellant no. 1 was at the relevant time minor and therefore condition of securing prior permission of the District Court is incorporated. Appellant no. 2 did not take timely steps for securing such permission. By passage of time he attained majority. It would be futile to implement the said condition. The substantial questions of law pressed into service by the appellants are devoid of any substance.

23. The appellants relied on the judgment of **Parswanath Saha Vs. Bandhana Modak (Das) and another; 2024 SCC OnLine SC 3844**. The proposition laid down by the Apex Court by *inter alia* referring to the various judgments are binding and cannot be doubted. The appellants have not made out a case of hardship.

24. The Second Appeal is dismissed. There shall be no order as to costs.

25. Pending Civil Application is disposed of

(SHAILESH P. BRAHME, J.)

26. After pronouncement of the order, learned counsel for the appellants prays for continuation of the statement made by learned counsel for the respondent which is recorded in order dated 22.04.2025. As the appellants are in possession and their possession has not been disturbed so far, I find no difficulty in continuing the same.

27. Learned counsel for the respondent continues the statement for further period of four (04) weeks.

(SHAILESH P. BRAHME, J.)

mkd/-