



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

SECOND APPEAL NO. 537 OF 2018

1. Sau. Babita w/o Mohan Igewar
Age: 58 years, Occ: Household,
R/o. Chikhali, Tq. Badnapur,
Dist. Jalna

At present r/o. Pritisudha nagar,
Besides Jinturkar Hospital, jalna,
Tq. & Dist. Jalna

....APPELLANT
(Orig. Defendant)

VERSUS

1. Laxman s/o Bajrang Barande
Age: 49 years, Occu: Agri.,
2. Bharat s/o Shivprasad Barande,
Age: 37 years, Occu. Agril.,

Both R/o. Saigaon, Tq. Badnapur,
Dist. Jalna.

....RESPONDENTS
(Orig. Plaintiff No.1 & 2)

Mr. M. K. Deshpande, Advocate for Appellant
Mr. S. V. Natu, Advocate for Respondent Nos.1 and 2

**WITH
CIVIL APPLICATION NO. 8560 OF 2018 IN SA/537/2018**

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CORAM : ROHIT W. JOSHI, J.

Dated : 06TH MARCH, 2025

ORAL JUDGMENT :-

. The present Second Appeal arises out of a suit for Specific Performance of Contract dated 28.08.2003 pertaining to plot No.24 in survey No.155 admeasuring 277.30 square meters.

2. The appellant is the original defendant. The respondent had filed suit for Specific Performance of the agreement, which was dismissed by the learned Trial Court on the ground that agreement was unregistered document, failure to prove readiness and willingness and also on the ground that suit is barred by limitation.

3. Aggrieved with the dismissal of the suit, the original plaintiff filed First Appeal, which has been allowed by the learned First Appellate Court. The First Appellate Court has granted decree for Specific Performance of Contract in favour of plaintiff.

4. Aggrieved by the said decree passed by the First Appellate Court, the original defendant has approached this Court in Second Appeal under Section 100 of the CPC.

5. The learned Advocate for the appellant has canvassed

the following three contentions:

i. That the document was not adequately stamped and was unregistered and as such decree for specific performance of contract could not have been granted on the basis of said document. He states that the document cannot be read in evidence at all for want of registration and deficit stamp duty.

ii. That there is an inordinate period of 08 years in between the date of agreement and date of filing of suit which clearly implies that the plaintiff was not ready and willing to perform his part of the contract.

iii. That the suit is filed after a period of 08 years from the date of agreement on the ground that at the relevant time, registration of sale deeds of plots in unauthorised layouts was prohibited, although the plaintiff has failed to bring any evidence on record to substantiate this contention.

6. He therefore submits that the learned First Appellate Court has erred in law in passing decree for Specific Performance of Contract. The above contentions according to him give rise to substantial questions of law for consideration in the present Second Appeal.

7. Section 49 of the Registration Act provides that the

document which is required to be registered under Section 17 of the said Act shall not be read in evidence of any transaction affecting the property involved unless it is registered. However, Section 49 has a proviso, which states that the said provision will not be applicable to an unregistered agreement of sale in a suit for specific performance of contract. In that view of the matter, the objection pertaining to registration of the document stands rejected.

8. Another contention raised by the learned Advocate is that the agreement to sale was required to be stamped as a conveyance in view of article 25(c) in the schedule appended to the Maharashtra Stamp Act.

9. The agreement of sale is exhibited during the course of evidence without any objection with respect to the deficit stamp duty. In view of Section 35 of the Maharashtra Stamp Act, once the document is marked as exhibit without objection during the course of evidence, objection to admissibility of the document cannot be raised subsequently. In that view of the matter, objection pertaining to deficit stamp duty is also rejected.

10. The learned Advocate has vehemently argued that time lag of 08 years between the date of agreement and the date of institution of suit will clearly indicate that the plaintiff was not ready and willing to perform his part of the contract. He further contends that even if it is assumed that entire sale consideration was paid on the date of agreement itself, delay of 08 years in filing suit will clearly signify lack of willingness.

11. I am not inclined to accept the said contention in as much as the plaintiff did not file suit immediately since he had paid the entire sale consideration at the time of agreement and was also placed in possession of the suit property. Both the learned Courts have recorded categorical finding in this regard. The defendant/vendor had executed a power of attorney in favour of the plaintiff enabling him to execute sale deed in terms of the agreement. However this power of attorney was revoked on 13.12.2010 and thereafter the plaintiff immediately issued a notice for specific performance on 15.10.2012 and thereafter filed the suit for Specific Performance of Contract promptly on 13.01.2011.

12. In view of the aforesaid, the contention with respect to

readiness and willingness is also liable to be rejected.

13. It needs to be mentioned that the agreement and power of attorney specifically records that at the relevant time, registration of sale deed was not permissible and therefore the arrangement of agreement coupled with power of attorney was worked out by the parties.

14. The last contention raised by the learned Counsel for the appellant is that the suit is barred by limitation. He contends that limitation of 03 years is prescribed for filing a suit for specific performance and contract and suit in the present case was filed after a period of 08 years.

15. I am afraid since date for execution of sale deed is not specified in the agreement, limitation will start from the date of refusal. The first date of refusal in the present case will be 13.12.2010 when the registered power of attorney executed by defendant in favour of plaintiff was revoked. The suit is filed within a period of around one and a half month from the said date and as such the suit is well within limitation.

16. In view of the aforesaid, no substantial question of law arises for consideration in the Second Appeal.

17. Second Appeal stands **dismissed**.
18. Pending Civil Application stand disposed of.

(ROHIT W. JOSHI, J)