



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

906 WRIT PETITION NO. 11017 OF 2025

**PRABHAWATI SANGRAMAPPA TELI NIZWANTE
VERSUS
MALLIKARJUN BANDAPPA KASNALE AND OTHERS**

...
Advocate for the petitioner : Mr.V.P.Savant
Advocate for Respondent no.7 : Mr.R.K.Ashtekar
...

**CORAM : ARUN R. PEDNEKER, J.
DATE : 27.11.2025**

P.C. :

1] Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2] The learned counsel for the petitioners submits that the suit for specific performance of the agreement to sale dated 27.06.2008 is decreed by the trial Court in favour of the respondent–plaintiff. The said decree is challenged by the original defendant nos.1 to 9 before the Appellate Court. The vendor has not filed appeal against the said decree of the trial Court. In the pending Appeal, the vendor

moved an application for recasting of the issues by submitting that the following issues are required to be recasted and matter is required to be remanded back to the trial Court for evidence on the issues and fresh adjudication :

1) Whether the defendants prove that the agreement to sale and receipt both dated 27.06.2008 are forged and fabricated?

2) Whether the plaintiff proves that on or before 27.06.2008 his financial capacity was there to pay an amount of Rs.35,00,000/- to the deceased Sangramappa Nijwante Teli?

3) Whether defendants prove that the receipt dated 27.06.2008 filed by the plaintiff is not sufficiently stamped and hence it is inadmissible in evidence?

3] *Per contra*, the learned counsel for the respondent – plaintiff submits that the petitioner has not preferred appeal against the decree of the trial Court and has not filed cross objection, therefore, the petitioner is

bound by the decree. As such, the application at the instance of the petitioner - vendor is not tenable. He further submits that the required issues are already covered by the trial Court so also the proposed issues are overlapping in nature. The issues are already framed and adjudicated in favour of the respondent-plaintiff. There is no occasion to frame fresh issues.

4] Having considered the submissions of the parties. The issues framed by the trial Court in the Special Civil Suit No.29/2010 are noted below :

	ISSUES	FINDINGS
1.	Does plaintiff prove that the deceased Sangramappa was the owner and possessor of the suit property?	Yes.
2.	Does plaintiff prove that the deceased Sangramappa was agreed to sell the suit property by way of agreement to sell dated 27/6/2008?	Yes
3.	Does plaintiff prove that he is ready and willing to perform his part of contract ?	Yes
4.	Does plaintiff prove he is entitled to the specific performance of contract dated 27/6/2008 ?	Yes
5.	Does plaintiff prove from which defendant he is entitled to execute the contract ?	Yes from defendant no.1.

6.	Does plaintiff prove that the sale deed of defendant no.5 to 9 by it's No.3588/2010 is not binding on him ?	Yes.
7.	What order and decree ?	As per final order.

5] While discussing the issues, the trial Court has recorded the findings as regards bogus and fabrication of the documents. The trial Court on considering the evidence and held that the consideration amounts were paid and the agreement to sell is executed. The issues are covered by the trial Court, so also, the proposed issues are overlapping in nature and the entire evidence is considered by the trial Court. The petitioner has not preferred appeal against the decree of the trial Court and has not filed cross objection also, as such, the petitioner is bound by a decree.

6] The learned counsel for the petitioner relies upon the judgment in the case of **Latif Karim Sahab Shaikh Vs. Md. Yusuf Karimsahab Shaikh & Ors.** reported in **2022 Supreme (Bom) 1724** and submits that any party to the proceedings can apply for re-framing or re-casting or deleting the issues. In the facts of the case of Latif Karim

Sahab Shaikh, the appeal is filed by the applicant, who had applied for re-casting of the issues.

7] Order 41 Rule 25 and 26 relates to where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from. - Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor. Such findings and evidence to be put on record. Order 41 of CPC deals with the Appeals from original decree. In the Appeal, such application may be entertained if the appellate Court comes to a conclusion that additional issues are

required to be framed. In the instant case, appeal is not preferred by the petitioner. The Hon'ble Supreme Court in the case of **Banarsi and ors. Vs. Ram Phal in Appeal [Civil] No.1376-77 of 2003** decided on 17.02.2003 has considered and discussed the power of the appellate Court to interfere with and reverse or modify the decree appealed against the appellants in the absence of any cross-objection by respondent under Order 41 Rule 22 of the CPC and scope of power conferred on appellate Court under Rule 33 of Order 41 of the CPC. The Supreme Court has held that respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. In the instant case, the decree is against the writ petitioner and he has not preferred Appeal. Even the person who has part decree in his favour can defend the decree only that extent and cannot challenge the entire decree. The Court has observed that it is necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the

same though that part of the decree which is in his favour he is entitled to support without taking any cross objection. The Court also observed that in an appeal filed by the defendant laying challenge to the relief of compensation or refund of money or any other relief while decree for specific performance was denied to the plaintiff, the plaintiff as respondent cannot seek the relief of specific performance of contract or modification of the impugned decree except by filing an appeal of his own or by taking cross objection. In the instant case, the defendant no.1 without seeking recourse to an appeal, is challenging the decree of the trial Court which may not be permissible in law. Hence, the Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC