

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 26 OF 2023
WITH CA/839/2023

Smt. Malti w/o Madhukar Chaudhary
Died through Legal Heirs.

1. Vilas s/o Madhukar Kulkarni
(Chaudhary) Age 63 years, Occu. Service,
R/o 43/10, Parekh Nagar, Jalgaon
Tq. And Dist. Jalgaon.
2. Vivek s/o Madhukar Chaudhary
Died through Legal Heirs.
- 2-A] Smt. Alka w/o Vivek Chaudhary,
Age 64 years, Occu. Household,
R/o Aurangapura, Aurangabad,
Tq. And Dist. Aurangabad
at present R/o Galli No.4, Dogambar Nagar,
Vadgaon Sheri, Pune,
Tq. And Dist. Pune.
- 2-B] Tushar s/o Vivek Kulkarni (Chaudhary),
Age 39 years, Occu. Service,
R/o as above.
- 2-C] Rupesh @ Yogesh s/o Vivek Kulkarni (Chaudhary),
Age 37 years, Occu. Service,
R/o as above.
- 2-D] Minal w/o Sandip Muley,
Age 41 years, Occu. Household,
At present R/o Uttaranagari, Chikalthana, Aurangabad.
3. Rajendra s/o Madhukar Kulkarni (Chaudhary)
Age 59 years, Occu. Agri. & Business,
R/o 13, Nana Kuti, Mundada Nagar,
Jalgaon, Tq. And Dist. Jalgaon.
4. Dilip s/o Baburao Palkhe,
Age 67 years, Occu. Pensioner,
R/o Near Ganpati Mandir,
Bambhori, Dist. Jalgaon.

..Appellants

Versus

1. Vasudev s/o Narayan Chaube,
Age 73 years, Occu. Agri. & Business,
R/o Abhinave Apartment,
Near Lions Hall, Adarsh Nagar,
Jalgaon, Tq. And Dist. Jalgaon.
2. Prakash s/o Babulal Chaube
Age 68 years, Occu. Agri. & Business,
R/o Chaube House, Polan Peth,
Jalgaon, Tq. And Dist. Jalgaon. ..Respondents

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Advocate for Appellants : Mr. G.G. Kadam

Advocate for Respondent Nos.1 & 2 : Mr. J.R. Shah h/f Mr. A.R. Syed

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CORAM : S. G. CHAPALGAONKAR, J.**DATED : AUGUST 11, 2025****ORDER :-**

1. Present appeal is filed impugning judgment and decree dated 30.08.2022 passed by District Judge, Jalgaon in Regular Civil Appeal No.189 of 2018 thereby upholding judgment and decree dated 31.08.2008 passed by Civil Judge Senior Division, Jalgaon in Special Civil Suit No.310 of 2010 thereby dismissing suit of appellant/plaintiff seeking decree of specific performance of contract.
2. The appellant/plaintiff instituted Special Civil Suit No.310 of 2010 before learned Civil Judge Senior Division, Jalgaon seeking specific performance of contract based on agreement to sale dated 21.05.2003. It is contention of plaintiff that land Block No.114 is owned and possessed by defendant no.1 and land Block No.117 is owned and possessed by defendant no.2. The defendants jointly

agreed to sale suit land to plaintiff for consideration of Rs.8,75,000/-. On 21.05.2003, defendants executed agreement to sale after accepting Rs.50,000/- towards earnest money. It is contention of plaintiff that defendants were under obligation to bring permission for sale transaction from District Collector, Jalgaon, further carrying out measurement of suit land before execution of sale deed apart from other terms and conditions in the agreement. According to plaintiff, although she was always ready and willing to perform her part of contract, defendants failed to take necessary steps for execution of sale deed. Ultimately, she issued a legal notice to defendants. In spite of service of such notice, sale deed was not executed. Hence, the suit is filed for specific performance of contract, possession of suit land, perpetual injunction and in alternative for refund of earnest money of Rs.50,000/- along with interest @ 18% p.a.

3. The defendants appeared in the suit. They admitted execution of agreement to sale but contended that sale transaction was to be completed within a period of four months from the date of agreement. The plaintiff has manipulated the original agreement and inserted some terms and conditions which are not part of agreed contract. The plaintiff was never ready and willing to perform her part of contract. The agreement is already cancelled. Present suit is filed with intention to extract money.

4. The Trial Court framed issues and recorded affirmative finding on point of execution of agreement to sale. However, held that plaintiff failed to prove her readiness and willingness to perform her part of contract and suit is barred by limitation. The Trial Court accepted contention of defendants that plaintiff has manipulated the terms and conditions in the contract. In result, dismissed the suit. The Appellate Court also concurred with the Trial Court and dismissed Regular Civil Appeal No.189 of 2018 filed by plaintiff.

5. Mr. G.G. Kadam, learned advocate appearing for appellants submits that both Courts have concurrently held that plaintiff has proved agreement to sale dated 21.05.2003, therefore, it was imperative to grant decree of specific performance as prayed. He would submit that defendants were aware about the requisition of permission from Collector for alienation of sale deed. Accordingly, they were put under obligation to bring such permission. However, both Courts have erroneously ignored the aforesaid condition under pretext that it is subsequently inserted. Mr. Kadam further submits that assuming that plaintiff was not entitled for relief of specific performance, at least decree for refund of earnest amount ought to have been passed.

6. Per contra, Mr. J.R. Shah, learned advocate appearing for respondents submits that both Courts concurrently recorded finding that plaintiff has unilaterally altered the terms of contract without

notice to respondents. Resultantly, the agreement stood automatically cancelled. He would submit that if there is interpolation in agreement, the purchaser is precluded from seeking enforcement of his right under such forged agreement. According to Mr. Shah, the conduct of appellant is sufficient to discard her claim for discretionary relief of specific performance. Mr. Shah would further submit that the suit is hopelessly barred by limitation as per terms of agreement. The period for performance of contract was fixed for four months. In result, no substantial questions of law arises for consideration in the present case. Both Courts have recorded concurrent findings of facts which need not be interfered in second appeal.

7. Having considered submissions advanced, it cannot be disputed that agreement to sale dated 21.05.2003 was executed by respondents in favour of plaintiff in respect of suit land. It is also not disputed that first time the plaintiff issued notice for specific performance of contract on 08.12.2010 and filed present suit on 23.12.2010. Evidently, plaintiff took no steps for getting execution of sale deed from defendants for more than seven years. The plaintiff has relied upon certain terms of agreement to sale which put obligation on defendants to obtain permission of sale from the office of Collector and also cause measurement from competent authority and produce copy of such measurement. All the aforesaid three terms are handwritten part of agreement whereas entire agreement is

typewritten. The defendants have brought on record the copy of agreement, before it was notarized, wherein all aforesaid three terms are absent. Pertinently, during cross-examination plaintiff has candidly admitted that aforesaid terms are inserted to save agreement being expired or barred by limitation. The aforesaid admission recorded during cross-examination of plaintiff clearly shows that original agreement is interpolated unilaterally by plaintiff.

8. Apart from aforesaid position, the Trial Court held that suit of plaintiff is barred by limitation observing that the registered sale deed was agreed to be executed within a period of four months from the date of agreement to sale. The agreement to sale is executed on 21.05.2003. The suit is filed on 23.12.2010. PW-2 has admitted in cross-examination that to save agreement being barred by law of limitation, the interpolation is made by adding handwritten terms. From aforesaid facts, it can be gathered that plaintiff was aware that time was essence of contract and with intention to save it being rendered futile, interpolation has been introduced. It is also matter of record that plaintiff issued legal notice to defendants on 08.12.2010 and filed suit within 15 days of issuance of notice. No infirmity can be found in observations of Trial Court holding that suit is barred by limitation.

9. Thirdly, both Courts have concurrently held that plaintiff failed to prove readiness and willingness to perform her part of

contract. Apparently during period from 21.05.2003 i.e. from the date of execution of agreement till date of issuance of legal notice on 08.12.2010, plaintiff failed to take any steps to secure execution of agreement to sale. Seven years silence on the part of plaintiff itself is sufficient to demonstrate that she was not ready and willing to perform her part of contract. The terms which was later on inserted are held to be unilateral insertion and therefore, the plaintiff cannot be allowed to rely upon such terms to contend that defendants defaulted in performing their part of contract or breach the conditions of contract.

10. Section 16 of Specific Relief Act creates personal bars to suits. Clause (c) of Section 16 mandates that party seeking specific performance of contract was always ready and willing to perform essential terms of contract. In case of ***PYDI Ramana Alias Ramulu Vs. Davarasety Manmadha Rao reported in (2024) 7 SCC 515***, the Hon'ble Supreme Court observed in paragraph nos.13 and 15 which reads thus :

"13. In order to obtain a decree for specific performance, the plaintiff must aver and prove that he has performed his part of the contract and has always been ready and willing to perform the terms of the contract which are to be performed by him. Section 16(c) of the Specific Relief Act mandates "readiness and willingness" of the plaintiff to be averred and proved and it is a condition precedent to obtain the relief of specific performance.

15. As per the recital in the agreements, the defendant was required to get the suit land surveyed and as such the total consideration was agreed to be settled after such survey. On the one hand, the plaintiff contends that the defendant never got surveyed the suit land. On the other hand, pleadings and evidence of the plaintiff is silent on steps taken by the plaintiff as expected of a reasonable person which has not been taken in the instant case, namely, the plaintiff has not produced any evidence either oral or documentary to establish that there was any demand made by him for the land being surveyed by the defendant. No witnesses have been examined on behalf of the plaintiff to establish that at any point of time there has been demand made by the plaintiff with the defendant by calling upon him to get the suit land surveyed as agreed under the agreement of sale Ext. A-1.”

11. The aforesaid exposition of law would depict that plaintiff must show positive steps taken by him to secure specific performance. Long standing silence defeats right to claim specific performance. In present case, plaintiff miserably failed to show his willingness. The delay of seven years to initiate proceeding in suit is fatal to claim of plaintiff.

12. Mr. J.R. Shah, learned advocate appearing for respondents is justified in contending that once it is found that material alteration in original contract which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty and as such renders it

void. The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed. In support of his contention, he rightly relied upon the observations of Privy Counsel in the case of *Nathu Lal and Others Vs. Musammat Gomti Kuar and Others reported in AIR 1940 PC 160*. Similarly, Mr. Shah invites attention of this Court to observations of Hon'ble Supreme Court in case of *Loonkaran Sethia Vs. Mr. Ivan E. John and Others reported in AIR 1977 SC 336*, particularly para 30 which reads thus :

“30. As the above mentioned alterations substantially vary the rights and liabilities as also the legal position of the parties, they cannot be held to be anything but material alterations and since they have been made without the consent of the defendants first set, they have the effect of cancelling the deed. Question No. 5 is, therefore, answered in the affirmative.”

13. Mr. Shah has further invited attention of this Court to judgment of Division Benches of Madras High Court in case of *Janab MHM Yakoob (died) and others Vs. M. Krishnan (died) and others reported in AIR 1992 Mad 80*, wherein it is held that in case of interpolation in agreement regarding recitals, the purchaser cannot enforce his right under agreement and no specific relief can be granted.

14. In light of aforesaid exposition of law, when plaintiff admitted in cross-examination regarding interpolation in original

agreement thereby causing material alterations as to obligations of respective parties, the plaintiff has lost his right to seek specific performance of contract. In such case, no sanctity can be attached to the agreement and no relief can be granted based on the same.

15. Although Mr. Kadam, learned advocate appearing for appellants contends that the Courts below ought to have granted alternate prayer for refund of earnest money, this Court finds that the interpolation in documents would vitiate entire contract as observed in the judgments referred above. Further, the agreement executed in the year 2003 is sought to be exhausted in the year 2010. As such, even it is assumed that plaintiff had right to recover the amount of earnest money, such claim would be beyond the period of limitation. In that view of matter, no substantial question of law exist in this appeal, no case is made out to cause interference under Section 100 of Civil Procedure Code.

16. In result, second appeal stands dismissed.

17. Civil Application No.839 of 2023 stands disposed of.

(S.G. CHAPALGAONKAR, J.)