

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.911 OF 2001

Sarubai w/o Shankar Honrao
(since deceased) by her Heirs
Balkrishna Shankar Honrao & Ors.

...Appellants

Versus

Shri. Bhairu Bhau Mandve

...Respondent

Mr. Prithviraj S. Gole i/by Mr. Sandesh D. Patil, Advocate for
Appellants.

None for Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED : 23rd July 2025

JUDGMENT :

1. Heard Mr. Gole, learned Counsel for the Appellants.
2. Although Mr. A.P. Chavare, learned Advocate has filed Vakalatnama for the Respondent, none appears for the Respondent. On earlier occasion also i.e. on 16th July 2025 as none appeared for the Respondent, the matter has been kept today. Today also, none appears for the Respondent.
3. This Second Appeal has been admitted by a learned Single Judge by Order dated 18th December 2001 on the following substantial questions of law:

“A) Whether the Lower Appellate Court could grant the decree for specific performance without disturbing the finding arrived at by the Trial Court regarding the absence of readiness and willingness on the part of the Plaintiff to perform his part of the contract?

(B) Whether in the absence of specific period being stipulated for the execution of the reconveyance of the property in the agreement along with the Deed of Sale, the proposed vendee would be entitled to seek specific performance of such agreement for reconveyance in total disregard to the provisions of law of limitation comprised in the Limitation Act, 1963 and whether mere issuance of notice demanding reconveyance after a lapse of period of 36 years could be said to be giving rise for cause of action to seek specific performance of agreement executed 36 years prior to the issuance of the notice?

4. It is the submission of Mr. Gole, learned Counsel that without recording any finding regarding readiness and willingness of the Plaintiff i.e. the Respondent to perform his part of the contract, the learned Appellate Court has granted Decree of specific performance. It is his submission that the learned Trial Court by considering the evidence on record has recorded specific

finding that the Plaintiff has failed to prove readiness and willingness to perform his part of the contract and dismissed the Suit. Mr. Gole, learned Counsel submits that without recording finding that the Plaintiff is ready to perform his part of the contract, the Suit is decreed by the learned Appellate Court.

5. Mr. Gole, learned Counsel for the Appellants has tendered a list of dates of events, which reads as under:-

LIST OF DATES AND EVENTS

#	Dates	Events
1	06/01/1956	Late. Shankar Kundalik Honrao (husband of Appellant no.1 and father of Appellant nos.2 to 4 herein, the Original Defendants) had purchased the property from the Respondent herein/Original Plaintiff, under a registered document.
2	06/01/1956	Another document of Re-conveyance on payment of Rs.250/- is made between the Plaintiff and said Late. Shankar Kundalik Honrao.
3	13/08/1966	Shankar Kundalik Honrao passed away.
4	21/12/1992	The Plaintiff (after about 36 years from the date of execution of alleged Agreement of Re-conveyance) issued notice to the Appellants and called upon the Appellants to execute Re-conveyance Deed in their favour and to deliver peaceful possession of the suit

		property.
5	29/01/1993	The Defendants replied to the said notice and denied the contentions of the Plaintiff.
6	28/04/1993	Plaintiff instituted RCS No. 281/1993 in the Court of Learned Civil Judge (Junior Division) Satara.
7	09/03/1995	The Learned Civil Judge (Junior Division) Satara was pleased to dismiss the said RCS No. 281/1993.
8	05/06/1995	Being aggrieved, the Plaintiff had preferred Regular Civil Appeal no. 302/1995 before the Learned District Judge, Satara.
9	20/10/2001	The Learned District Judge, Satara was pleased to allow the said appeal and was pleased to quash and set aside the well reasoned judgment and order dated 09/03/1995 passed by Learned Civil Judge (Junior Division) Satara.
		Hence the present Second Appeal.

(Emphasis added)

6. The above factual aspect makes it clear that the Suit has been filed for specific performance of the contract of re-conveyance dated 6th January 1956. The Suit has been filed on 28th April 1993 i.e. nearly after about 36 years.

7. The learned Trial Court by considering the evidence on record, recorded specific finding that the Plaintiff has failed to prove the readiness and willingness to perform his contract. The

issue No.2 is regarding readiness and willingness and said discussion is to be found in paragraph 8, which reads as under :

“8. Issue no.2:-

When the plaintiff is claiming the relief of specific performance of agreement of reconveyance, he has to plead and prove that he was and is ready to perform his part of contract as stated in section 16 of the Specific Relief Act. Plaintiff had ever this fact in the plaint and deposed in the Court vide Exh. 26. The agreement is dt. 6/1/56. On 6/1/56, plaintiff executed the document of sale-deed vide Exh.36 in favour of Shankar and obtained agreement of reconveyance from him. Therefore, plaintiff has to prove that since 6/1/56, till the date of hearing, he was and is ready to perform his part of contract. It is pleaded and deposed by plaintiff in the Court that after execution of agreement to sell, his wife became sick. He provided medicines to her and she died in the year 1972. Then he kept his son Dada in the house of his maternal uncle and maintained him. Then, he faced stomach operation. It is also his submission that the agreement of reconveyance vide Exh. 35 was misplaced and due to all these reasons, he could not perform his part of contract. According to me, all these are excuses stated by the plaintiff which is not recognized under any provisions of law. Man has to face the problem in day to day life. This cannot be treated as excuses for non performance of an agreement. Plaintiff is bound to perform his part of contract within reasonable time. The record shows that plaintiff issued notice to defendant on 21/12/92 after 36 years, from the date of transaction. This conduct of plaintiff on record shows that plaintiff is not ready and willing to perform his part of contract. Plaintiff is bound to give the account of the period which is required to perform

his part of contract. In this case, plaintiff has made attempt to state some excuses, but those are not on record. **Except bear words of plaintiff Dada, no evidence is forthcoming to show that plaintiff faced so many problems as stated in the plaint and in the deposition of Dada. Plaintiff slept over for his rights more than 37 years.** He has no evidence to show that within 37 years, he had made any honest attempt to perform his part of contract to obtain reconveyance deed from defendant. Husband of defendant no.1 Shankar died in the year 1962. No evidence is on record to show that plaintiff demanded reconveyance deed to husband of defendant no.1 and after his death to the defendant. Considering this aspect on record, **I came to the conclusion that plaintiff is not ready and willing to perform his part of contract within the ambit of section 16 (1) (c) of the Specific Relief Act. With this discussion, I answer issue no. 2 in the negative.”**

(Emphasis added)

Thus, it is clear that the learned Trial Court after considering the evidence on record has specifically held that the Plaintiff has failed to prove readiness and willingness.

8. In this background of the matter, it is required to note the reasons recorded by the learned Appellate Court. The learned Appellate Court, although has held while answering point No.2 that the Plaintiff has proved readiness and willingness, the discussion in that regard from paragraph Nos. 28 to 34 shows that the learned Appellate Court has not taken into consideration the

evidence on record, which has been discussed by the learned Trial Court. Accordingly, it is clear that there is substance in the substantial questions of law framed by the learned Single Judge. The first substantial question of law framed by the learned Single Judge is whether the lower Appellate Court could grant the decree for specific performance without disturbing the finding arrived at by the learned Trial Court regarding the absence of readiness and willingness on the part of the Plaintiff to perform his part of the contract.

9. Perusal of the Judgment of the learned Appellate Court clearly shows that without discussing any evidence on record and just by mentioning principles which are required to be taken into consideration while considering readiness and willingness, it has been held that the Plaintiff is ready and willing to perform his part of the contract. The said finding is contrary to the evidence on record and is perverse.

10. The second substantial question of law framed by learned Single Judge is whether in the absence of specific period being stipulated for the execution of the reconveyance of the property in the agreement along with the Deed of Sale, the proposed vendee would be entitled to seek specific performance of such agreement

for reconveyance in total disregard to the provisions of law of limitation comprised in the Limitation Act, 1963 and whether mere issuance of notice demanding reconveyance after a lapse of period of 36 years could be said to be giving rise for cause of action to seek specific performance of agreement executed 36 years prior to the issuance of the notice.

11. Perusal of said document of reconveyance dated 6th January 1956 clearly shows that there is no period specified for said reconveyance. After a period of 36 years, i.e. on 21st December 1992, the Plaintiff has issued notice to the Appellants calling upon the Appellants to execute the reconveyance deed. There is no explanation for such a long period of 36 years. Thus there is also substance in the second substantial question of law. However, as I have already held that the Respondent-Plaintiff has failed to prove readiness and willingness and therefore answered first substantial question of law in favour of the Appellants, no elaborate reasons are recorded concerning Point No.2.

12. Accordingly, the Second Appeal is allowed. The Judgment and Decree dated 20th October 2001 passed by the learned 3rd Additional District Judge, Satara in Regular Civil Appeal No. 302 of 1995 is quashed and set aside and resultantly the Decree passed by

the learned Joint Civil Judge, Junior Division, Satara by Judgment and Decree dated 9th March 1995 dismissing said Regular Civil Suit No.281 of 1993 is confirmed.

13. The Second Appeal is allowed in above terms with no Order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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