



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 91 OF 2025

WITH

INTERIM APPLICATION NO.7084 OF 2025

IN

SECOND APPEAL NO. 91 OF 2025

Alkabai Goraksha Makune and Anr.

..Appellants

Versus

Bhausahab Devram Chavan

...Respondent

Mr. Vaibhav Kadam a/w. Shrinath Badade a/w. Vedika Bhoir,
a/w. Rayyan Shah , for the Appellant.

Mr. Ranjit Thorat, Senior Advocate, a/w. Adv. Pratibha S a/w.
Adv. Ajit Hon, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATE : 8th OCTOBER 2025

ORDER:

1. This Second Appeal is directed against the Judgment and Decree passed by the learned District Judge, Yeola, Nashik in Regular Civil Appeal No. 63 of 2023 whereby the appeal preferred by the Appellants – Original Defendants against the judgment and decree passed by the learned Civil Judge in Special Civil Suit No. 63 of 2011 came to be dismissed.

2. The Respondent – Plaintiff has instituted a suit for Specific Performance of the contract to sell an agricultural land bearing Gat

No.121/1, admeasuring 05 Acres situated at Gujarkheda, Tal-Yeola, Nashik ("Suit Land"). The Appellant (D1) was the owner of the suit land.

3. The Defendant No.1 agreed to sell the suit land for a total consideration of Rs. 7,70,000/-. A sum of Rs.3,50,000/- was paid on 6th June, 2008 and an earnest note was executed by Defendant No.1 on 28th August,2008. Eventually the Defendant No.1 executed a registered agreement for sale, power of attorney and possession receipt in favour of the Respondent. As the suit land was of restricted tenure, the defendant No.1 applied for permission for sale of the suit land. Vide a communication dated 6th April, 2010, the entry of restricted tenure came to be deleted from the Record of Rights from the suit land. Thereupon, the Plaintiff called upon the Defendant No.1 to execute the registered instrument. Upon failure, the Plaintiff filed a suit for Specific Performance of the said contract.

4. The Defendant No.1 contended that the documents were forged and fabricated. She had never agreed to sell the suit land in favour of the Plaintiff. The father of the Defendant No.1 had taken a hand loan of Rs. 40,000/- from the Plaintiff. It was duly repaid. Taking undue advantage of the said transaction, without disclosing the contents of the documents, the Defendant No.1 was made to put signature on those documents.

5. The trial Court was not persuaded to countenance the defence of the Defendant No.1. It was, *inter alia*, noted that the execution of the documents, as such, was not put in contest. In fact, the Defendant No.1 admitted the execution of those documents during the course of the cross-examination. The theory of hand loan was not worthy of acceptance. The registered Agreement for Sale was witnessed by Goraknath Makune, the husband of the Defendant No.1. Therefore, the learned Civil Judge found that the contract for sale was duly proved and the plaintiff had also shown readiness and willingness to perform his part of the contract. Holding thus, the suit came to be decreed.

6. In the Appeal the learned District Judge found no reason to take a different view of the matter.

7. Mr. Kadam, learned Counsel for the Appellants, made an endeavour to draw home the point that the Courts below did not properly appreciate the defence of the Defendant No.1. The aspect of readiness and willingness of the Plaintiff was also decided erroneously. In fact, the transaction between the parties was that of a hand loan. Therefore, the misconstruction of documents and misreading of evidence give rise to substantial questions of law, urged learned Counsel for the Appellants.

8. I am afraid any of the aforesaid submissions merit consideration. The documents, including the agreement for sale dated 6th June, 2008,

before the Notary Public, a registered agreement for sale and payment receipt, the General Power of Attorney and the possession receipt, clearly evidence the transaction between the parties. Conversely, the defence that the Defendant No.1 and her father had borrowed and repaid the sum of Rs. 40,000/- from the Plaintiff and the Defendant No.1 was made to execute documents by practicing fraud and misrepresentation, does not appear to be borne out by the evidence on record.

9. What impairs the defence of the Defendant No.1 is that the husband of Defendant No.1 was a witness to the agreement for sale and the Defendant No.1 had, in fact, applied for, and obtained permission of, the Collector to change the tenure of the subject land.

10. In the circumstances, both the existence of the contract for sale and refusal of performance thereof can be said to have been duly proved. The Courts below thus committed no error in granting the decree for Specific Performance.

11. As no substantial question of law arises for consideration, Second Appeal stands dismissed.

12. In view of the dismissal of Appeal, the interim application also stands dismissed.

[N. J. JAMADAR, J.]