



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.271 OF 2025

Appellant

(On R.A. - Original Plaintiff)

: Anil s/o Khindulal Chauragade,
 Aged 59 years, Occ. Agriculturist & Doctor,
 R/o Ward No.4, Deori, Tq. Deori & Dist. Gondia.
 – Versus –

Respondents

(On R.A. - Original Defendants)

- : 1. Smt. Kamaltai wd/o Shridhar Wargantiwar,
 Aged 75 years, Occ. Agriculturist,
 R/o Ward No.4, Deori, Tq. Deori & Dist. Gondia.
 Also R/o Sikshak Colony, Laksh Hospital,
 Behind Dr. Vyas, Takiya Ward, Bhandara,
 Tq. & Dist. Bhandara.
2. Ashafak s/o Hamidulla Khan,
 Aged 52 years, Occ. Agriculturist/Business,
 R/o Sardar Patel Colony, Lohiya Ward, Railtoli,
 Gondia, Tq. & Dist. Gondia.
3. Ajahar s/o Ataulla Khan,
 Aged : 35 years, Occ. Agriculturist/Business,
 R/o Tandan Ward, Bhandara,
 Tq. & Dist. Bhandara.

 Mr. U.K. Bisen, Advocate for the Appellant.
 None for the Respondents.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **22nd SEPTEMBER, 2025.**

ORAL JUDGMENT :

Heard the learned Advocate for the appellant. None appears
 for the respondents.

02. The present appeal arises out of a suit for specific performance of contract. The appellant is the original plaintiff. The learned trial Court has dismissed the suit holding that the plaintiff has failed to prove the alleged agreement of sale. The learned first appellate Court has confirmed the decree passed by the learned trial Court by dismissing the appeal preferred by the plaintiff. The appellant and respondent No.1 will be hereinafter referred to as plaintiff and defendant, respectively.

03. Mr. U.K. Bisen, learned Counsel for the appellant contends that since signature on the agreement was admitted by the defendant, the burden of proving the fraud was on the defendant. He states that the defendant has failed to discharge the said burden. He, therefore, criticizes the findings recorded by the learned Court and argues that a substantial questions of law arise in the appeal with respect to perversity of findings with respect to execution of agreement and burden of proof to prove alleged fraud in execution of agreement.

04. It is the case of the plaintiff that he has entered into an agreement of sale with the defendant *inter alia* agreeing to purchase the suit property, which comprises of an agricultural land bearing Gat No.309/1/A, Pot Hissa No.8, admeasuring 1.00 HR, situated at village Deori, Tahsil Deori, District Gondia for a consideration of Rs.5.51 lakhs.

The agreement is marked as Exh.29. The plaintiff contends that out of the total sale consideration of Rs.5.51 lakhs, a sum of Rs.5.00 lakhs was paid by him to the defendant on the date of agreement of sale. The sale-deed was to be executed on 30/11/2011. Since the defendant did not execute the sale-deed, the plaintiff issued notice dated 21/03/2012. Since the defendant did not execute the sale-deed in spite of the said notice, the plaintiff filed the suit on 05/07/2012.

05. The defendant entered appearance in the matter and denied the agreement. Signature on the agreement is admitted. It is, however, contended that the plaintiff, who is friend of son of the defendant, tricked the defendant in signing the agreement. The receipt of amount of Rs.5.00 lakhs is also denied.

06. Based on rival pleadings, the learned trial Court framed issues in the matter. It will be pertinent to mention that initially the suit was proceeded *ex parte* and it was decreed. However, an application for setting aside *ex parte* decree filed by the defendant was allowed and the suit was contested on merits thereafter. It will also be pertinent to mention that the original agreement was destroyed with passage of time as per the provisions of Civil Manual relating to destruction of records.

07. The plaintiff examined himself and two other witnesses viz. Karu Darao as PW-2 and Kishan Lende as PW-3, who have signed the agreement as attesting witnesses. The defendant examined herself as DW-1 and her son Anil Wargantiwar as DW-2 and one Akabar Khan Ajij Khan Pathan as DW-3.

08. As stated above, both the learned Courts have concurrently held that the plaintiff has failed to prove the agreement of sale and have dismissed the suit accordingly. In this regard, it must be stated that as per the agreement, the plaintiff had paid a sum of Rs.5.00 lakhs to the defendant on 31/10/2011, i.e. the date of execution of the agreement. The amount is stated to be paid in cash. During the course of his cross-examination, the plaintiff admitted that the alleged transaction of payment of Rs.5.00 lakhs in cash is not reflected in his accounts and income tax returns. The plaintiff has not brought any evidence on record to demonstrate the manner in which the amount of Rs.5.00 lakhs in cash was gathered. Likewise, the agreement recites that the possession of the property was delivered to the plaintiff on the date of agreement itself. However, the plaint does not state that possession was delivered to the plaintiff. The plaintiff has admitted that he was not placed in possession of the suit property as mentioned in the agreement. These two circumstances, which have come on record from the evidence of the plaintiff, are taken

into consideration by both the learned Courts in arriving at a conclusion that the plaintiff had failed to prove payment of consideration as mentioned in the agreement and also that the parties have not acted as per the contents of the agreement. The learned trial Court has also found that although the defendant was resident of Bhandara, the agreement is stated to be executed at Deori. The learned trial Court has observed that appropriate explanation in this regard is not offered by the plaintiff. It is observed that the defendant was around 74 years of age on the date of agreement and, therefore, the plaintiff should have clarified the aspect with respect to talks in relation to the agreement, finalization of bargain etc., since, according to the plaintiff, the talks with respect to agreement were held on 30/10/2011 and agreement was executed on the next day i.e. on 31/10/2011. The place of residence and execution of agreement assumes significance in view of the date of initiation of talks and execution of agreement, and place of residence and place of execution of agreement. As regards the defence of the defendant, the plaintiff tried outrightly to reject the contention that he was friend of defendant's son, which is also found to be false in view of the documentary evidence on record, which he could not dispute during the course of his cross-examination. These circumstances, according to the learned Courts, go on to discredit the agreement.

09. Apart from this, the learned Courts have exhaustively dealt with the evidence of plaintiff's witness Nos.2 and 3, who, according to him, are the attesting witnesses. The learned Courts have found that PW-2 stated that the affidavit of examination-in-chief was not prepared on her instructions. The said witness also admitted that she did not know, who had signed the agreement at Exh.29. Likewise, the plaintiff's witness No.3 who had a long association with him as his employee, also stated that nobody had signed the agreement in his presence. The aforesaid findings are pure finding of facts recorded by both the learned Courts concurrently. The evidence on record is taken into consideration by both the learned Courts while arriving at such findings.

10. As regards the burden of proof, it must be stated that the same can be discharged by leading independent evidence and also by discrediting the evidence brought on record by the other side. In the case at hand, the defendant has successfully demolished the case of the plaintiff with respect to the agreement during the course of cross-examination of the plaintiff and his witnesses. Two factors clearly stand out. The plaintiff has failed to prove payment of Rs.5.00 lakhs in cash as is mentioned in the agreement. The plaintiff clearly admitted that the said payment was not reflected in his account/books and income tax returns. This is a strong circumstance, which goes against the case of the plaintiff with respect to

the contract between the parties. Likewise, there is a clear contradiction with respect to contents of the agreement and pleadings and evidence as regards delivery of possession. The plaintiff's witnesses also are unable to substantiate the case of the plaintiff with respect to due execution of the agreement. The plaintiff must stand or fall on the strength of his own case. The plaintiff has failed to discharge the initial burden.

11. The findings of facts concurrently recorded by both the learned Courts cannot be said to be perverse or based simply on conjectures and/or surmises.

12. In the considered opinion of this Court, no substantial question of law arises for consideration in the present second appeal. The second appeal is, therefore, dismissed with no orders as to costs.

(Rohit W. Joshi, J.)