



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

SECOND APPEAL NO.213/2021

APPELLANT : Prashant S/o Pralhadrao Muley
Original Aged about 40 years, Occu : Business,
Defendant R/o Balaji Nagar, Nagpur.
No.3 On RA

...VERSUS...

RESPONDENTS : 1. Rita W/o Vinay Mohabey
Ori. Plaintiff Aged about 53 years, Occup : Business
on RA R/o 2nd Floor 58 B.
BB Towers Shankar Nagar, Nagpur.

Ori. Def. no.1 2. Harishankar S/o Gokulprasad Sharma,
On RA Aged about 70 years, Occ : Business

Ori Def. no.2 3. Smt. Madhuri W/o Harishankar Sharma,
On RA Aged about 62 years, Occ. Business.

Both Respondent No.2 and 3
R/o 1st Floor BB Towers Shankar Nagar, Nagpur.

Mr. P.S. Tiwari, Advocate for appellant
Mr. D.N. Mehta, Advocate for respondent No.1

CORAM : ROHIT W. JOSHI, J.

DATE : 23/12/2025

ORAL JUDGMENT:

1. The present appeal is preferred by the original defendant No.3, challenging the concurrent decrees for specific performance of contract passed in favour of the plaintiff, who is the respondent No.1 in the present appeal. The respondent Nos.2 and 3 are original defendant Nos.1 and 2. The parties will be referred to as “plaintiff and defendants”.

2. Notice was issued in the present second appeal vide order dated 27/06/2022 on the following substantial questions of law :-

(1) Whether the impugned judgments passed by the learned courts below are perverse, illegal and bad in law and deserves to be quashed and set aside ?

(2) Whether the Appellate Court is justified in recording the same judgments which were set aside by this Court in Second Appeal No.34/2017 ?

(3) Whether the suit filed by the plaintiff for specific performance of agreement dated 24.1.2005 which was admittedly terminated by the defendant no.1 and 2 on 3.1.2006 can be said to be maintainable in absence of prayer seeking declaratory relief that termination of the agreement by the defendant no.1 and 2 was itself illegal and bad in law ?

3. The plaintiff had entered into agreement of sale with the defendant Nos.1 and 2 with respect to suit property, which comprises of piece of land bearing plot No.23 admeasuring 198 sq. meters situated at Mouza Somalwada in Jai Durga Housing Society Layout, Tq. and District Nagpur within the limits of Nagpur Municipal Corporation. The suit property was admittedly located in an unauthorized Layout. The Nagpur Improvement Trust (NIT) was competent authority for regularization of the Layout. The suit plot was shown as reserved for public road as can be seen from the memo dated 13/05/2005 (Exh.104) issued by the Building Engineer of the NIT.

4. The plaintiff has entered into agreement of sale on 24/01/2005. The total agreed sale consideration was Rs.6,25,000/-. Out of this amount, the plaintiff has paid sum of Rs.5,30,000/- to the defendant Nos.1 and 2 from time to time. The sale-deed was to be executed on or before 15/04/2005. However, the sale-deed was to be executed only on regularization of the suit property. It must be stated that since the suit property was located in an unauthorized layout, regularization of the plot was essential for registration of sale-deed, although agreement does not specifically so recite. It must be stated that the defendant Nos.1 and 2 had executed a power of attorney dated 22/02/2005 in favour of the husband of plaintiff in order to complete the formalities for regularization of plot and for execution of sale-deed (Exh.83). The defendant Nos.1 and 2 issued termination notice dated 03/01/2006, thereby terminating the agreement in question. In this backdrop, the plaintiff filed Special Civil Suit No.163/2006 for specific performance of contract on 16/02/2006. In the meantime, the respondent Nos.1 and 2 executed registered sale-deed with respect to the said property in favour of the defendant No.3 on 08/02/2006 (Exh.98). The date of the said sale-deed is eight days prior to the date of institution of the suit.

5. The learned trial Court has allowed the suit thereby granting relief for specific performance of contract to the plaintiff on the condition that balance sale consideration of Rs.95,000/- will be paid or deposited in the Court within a period of 45 days from the date of judgment i.e. 31/10/2013. The defendant Nos.1 and 2 did not challenge the decree for specific performance of contract. However, the defendant No.3 – purchaser challenged the decree for specific performance of contract by filing appeal being Regular Civil Appeal No.41/2014, which was dismissed vide judgment and decree dated 18/08/2016. The judgment was challenged by filing Second Appeal No.34/2017. The learned first Appellate Court did not entertain the challenge to the decree for specific performance of contract passed by the learned trial Court at the behest of the defendant No.3 on the ground that issue of readiness and willingness could not be raised by a subsequent purchaser. This Court allowed the second appeal in part vide judgment dated 27/08/2018 passed in Second Appeal No.34/2017, remanding the Regular Civil Appeal to the learned first Appellate Court holding that the subsequent purchaser was also entitled to raise issue of readiness and willingness.

6. After the appeal came to be remanded, the learned first Appellate Court has decided the appeal afresh and has again confirmed the judgment and decree for specific performance, passed by the

learned trial Court vide judgment and decree dated 09/12/2020. This decree is subject matter of challenge in the present appeal.

7. Mr. Tiwari, learned Advocate for the appellant has raised following contentions with respect to substantial questions of law framed vide order dated 27/06/2022 and urges that an additional question needs to be framed as regards the defendant No.3 being a *bona fide* purchaser and that registered sale deed of defendant No.3 shall prevail over unregistered agreement of sale in favour of plaintiff.

Substantial Question of law No.1 :

(i) He contends that the plaintiff had failed to make out a case of being all the while ready and willing to perform her part of contract. The learned Advocate contends that despite the fact that the power of attorney for completing formalities with respect to regularization of plot was given to husband of plaintiff, the plaintiff and her husband did not take any effective steps to obtain NOC from the NIT for regularization of the plot for execution and registration of sale-deed. Learned Advocate draws attention to cross-examination of the plaintiff and her husband to contend that admittedly before 15/04/2005 which was the date stipulated for execution of sale-deed, the plaintiff or her husband did not move any application, requesting issuance of demand note.

Substantial Question of law No.2 :

(ii) The contention of Advocate Mr. Tiwari with respect to Substantial Question of law No.2 is that the learned first Appellate Court has committed error in exercising jurisdiction by not applying its mind independently in the facts of the case and has reproduced the earlier judgment which was quashed and set aside by this Court. In support of his contention, Mr. Tiwari draws attention of this Court to the earlier judgment dated 18/08/2016. He contends that although the judgment and decree passed by the learned first Appellate Court was set aside by this Court in second appeal and the appeal was remanded for consideration afresh, the learned first Appellate Court has mechanically reproduced the same findings from its earlier judgment. Mr. Tiwari refers to paragraphs 4, 6, 7, 8, 9, 10, 16, 17 and 19 in the earlier judgment dated 18/08/2016 as also paragraphs 5, 7, 8, 9, 10, 11, 21, 22, 23 and 24 of the judgment dated 09/12/2020 after remand. He has placed reliance on judgment of the Hon'ble Supreme Court in the matter of *Union Public Service Commission Vs. Bibhu Prasad Sarangi and others*, reported in *(2021) 4 SCC 516* to contend that the said conduct does not disclose application of mind on the part of the learned first Appellate Court in dismissing the appeal.

Substantial Question of Law No.3 :

(iii) The agreement dated 24/01/2005 was terminated vide termination notice dated 03/01/2006. The plaintiff did not seek declaration that the termination notice was bad in law. He placed reliance on the judgments of the Hon'ble Supreme Court in the matter of *I.S. Sikandar (Dead) By Lrs. Vs. Ku. Subramani and others*, reported in *(2013) 15 SCC 27* and *Sangita Sinha Vs. Bhawana Bhardwaj and others*, reported in *2025 SCC OnLine SC 723* to contend that the suit for specific performance of contract was not maintainable and was liable to be dismissed since declaration is not sought that termination notice is bad in law.

(iv) Apart from the above, Mr. Tiwari, contends that another Substantial Question of law needs to be framed in the appeal that the registered sale-deed of the defendant No.3 must prevail over prior unregistered agreement of sale executed in favour of plaintiff. He also contends that the appellant/defendant No.3 is a *bona fide* purchaser and that the agreement in favour of the plaintiff is admittedly an unregistered agreement, against which, the defendant No.3 has a registered sale-deed and therefore, the said sale-deed must prevail over the unregistered agreement of sale.

8. Mr. Mehta, learned Advocate for the respondent No.1, in counter, draws attention to the fact that the suit property was under

reservation of a road and therefore, not much could be done by the plaintiff in that regard. He, however, draws attention to Exhibit - 92, which is a letter dated 20/12/2005, issued by husband of the plaintiff to the Building Engineer of NIT, requesting to issue demand note. Mr. Mehta, learned Advocate further contends that around 85 to 90 % of the consideration was paid by the plaintiff to the defendant Nos.1 and 2 and therefore, it cannot be assumed that the plaintiff was delaying the execution of sale-deed. He contends that the learned Courts have correctly recorded finding with respect to readiness and willingness. He argues that the prayer for declaration that agreement is subsisting includes a prayer for declaration that termination of agreement is bad. As regards identical findings after remand, learned Advocate contends that independent application of mind is clearly exhibited from reading of the judgment.

9. As regards the defendant No.3 being a *bona fide* purchaser for value, it is true that the agreement in question is unregistered document. If the sale-deed in favour of the defendant No.3 was executed without knowledge of the prior agreement to the defendant No.3, then the contention of Mr. Tiwari, learned Advocate for the appellant that the sale-deed must prevail over the agreement must be accepted. However, the evidence on record would suggest that the defendant No.3 was aware about the prior agreement in favour of the

plaintiff. In this regard, it will be appropriate to refer to the written statement of the defendant No.3, wherein he has stated that the sale-deed in favour of the defendant No.3 was executed by the defendant Nos.1 and 2 after termination of the agreement of sale in favour of the plaintiff. The cross-examination of defendant No.2 will demonstrate that she has stated in categorical terms that the defendant No.3 was made aware about prior agreement with the plaintiff before entering into agreement with him. The defendant No.3 has stated in his cross-examination that the agreement between the plaintiff and defendant Nos.1 and 2 was cancelled. It will be pertinent to state that defendant No.3 also contended that he had a prior agreement of sale with respect to the suit property, with defendant Nos.1 and 2. In paragraph 21 of the written statement, initially, it was contended that the said agreement of sale was entered into on 16/01/2003. However, the written statement was amended and thereafter it was stated that the agreement was entered into on 05/04/2004. Schedule of payment in paragraph 22 of the written statement is at variance with the schedule of payment mentioned in the sale-deed executed by defendant Nos.1 and 2 in favour of defendant No.3.

10. In view of the above, it must be held that defendant No.3 failed to prove prior agreement. Defendant No.3 was obviously aware about agreement in favour of the plaintiff. In the considered opinion of

this Court, the defendant No.3 cannot be said to be a *bona fide* purchaser for value.

11. As regards the sale deed dated 08/02/2006, it is proved that the defendant No.3 purchased the suit property despite knowledge of prior agreement of sale with respect to the same in favour of the plaintiff. Therefore, the agreement of sale, even if it is unregistered, shall prevail over the registered sale deed.

Substantial Question of law No.1 :

12. As regards the first Substantial Question of law relating to perversity and legality of findings, Mr. Tiwari has restricted his submissions to Section 16 (c) of the Specific Relief Act, 1963, which pertains to readiness and willingness on the part of plaintiff to perform her part of contract. With respect to the issue pertaining to readiness and willingness, it is concurrently held by both the learned Courts that out of total sale consideration of Rs.6,25,000/-, the plaintiff has paid amount of Rs.5,30,000/- to the defendant Nos.1 and 2/vendors. It will be pertinent to state that the contention of the plaintiff was that total consideration paid was Rs.5,50,000/-. The contention of Mr. Tiwari is that mere payment of consideration would not suffice and that in order to show her readiness and willingness, it was incumbent upon the plaintiff to prove that she and/or her husband had taken effective steps,

pursuant to the power of attorney granted in favour of her husband, for regularization of the plot in order to complete sale transaction. Mr. Tiwari contends that the plaintiff has miserably failed to prove that any effective steps were taken in that direction.

13. The finding with respect to payment of consideration made by the plaintiff is a finding of fact, which is recorded by both the learned Courts concurrently upon appreciation of evidence on record. Appreciation of evidence appears to be proper. This Court finds no reason to hold that the plaintiff failed to prove payment of consideration to the tune of Rs.5,30,000/- out of the total consideration of Rs.6,25,000/-. The said finding is also not challenged during the course of hearing.

14. It is also duly proved that the plot in question was under reservation of a public road, which was hindrance in execution and registration of sale-deed. Since the reservation was for the purpose of road, it is obvious that reservation of the suit plot alone could not have been deleted. The reservation would be deleted only upon a decision to shift the proposed road elsewhere. Therefore, it cannot be said that the plaintiff/purchaser or her husband were responsible for not taking effective steps for deletion of reservation. A letter dated 20/12/2005 (Exh.92) was issued by husband of the plaintiff, requesting for issuance of demand-note. It will also be pertinent to state that the last payment is

made on 12/04/2005 i.e. three days before the date stipulated for execution of sale-deed. It appears that defendant Nos.2 and 3 were also aware about the difficulty for execution of registration of sale-deed and have accepted the payment as part of sale consideration three days before the execution of registration of sale-deed. The concurrent findings of facts as regards readiness and willingness recorded by the learned Courts are based on appreciation of evidence. The findings are not perverse or based on conjuncture and surmises. The findings do not warrant any interference in exercise of jurisdiction under Section 100 of the Code of Civil Procedure. The second contention raised by learned Advocate for the appellant is, therefore, rejected.

Substantial Question of law No.2 :

15. As regards Substantial Question of law No.2 contention of Mr. Tiwari, learned Advocate for the appellant with respect to second substantial question of law, perusal of two judgments in question will demonstrate that there is a substance in the contention of Mr. Tiwari that the first Appellate Court has reproduced some paragraphs from the earlier judgment which was set aside by this Court. Normally, the matter would have been remanded to the learned first Appellate Court for adjudication of the appeal afresh. Although I am in agreement with Mr. Tiwari, learned Advocate for the appellant that the first Appellate Court

should not have reproduced paragraphs from its earlier judgment, on overall appreciation of material on record, I am not inclined to remand the matter to the learned First Appellate Court to decide the appeal afresh. The paragraphs, which are same as or similar to the earlier judgment are pertaining to narration of facts and findings on point No.1, which relates to earlier alleged agreement executed by defendant Nos.1 and 2 in favour of defendant No.3. The defendant No.3 has failed to prove his case that he had a prior agreement of sale with respect to the suit property. The pleadings and evidence of the defendant No.3 are sufficient to discard the said defence. As regards the other points for determination, perusal of findings in the two judgments will demonstrate that they are not same or similar. The subsequent judgment indicates independent application of mind with respect to other points for determination. As regards the point for determination with respect to prior agreement, although the findings are identical in both the judgments, this Court has appreciated the evidence in view of Section 103 of the Code of Civil Procedure and has recorded independent finding that the defendant No.3 has failed prove the case of alleged prior agreement. In that view of the matter, concurrent decrees for specific performance passed in favour of the respondent No.1/plaintiff cannot be set aside on this ground.

Substantial Question of law No.3 :

16. As regards third Substantial Question of law relating to absence of prayer for declaration that termination is bad, perusal of the prayer clause in the plaint will indicate that the plaintiff has sought declaration that the agreement in question is in subsistence. The plaintiff has referred to termination notice dated 03/01/2006 in the plaint and has made the said prayer in the backdrop of the said notice of termination. In the considered opinion of this Court, the said prayer must be interpreted broadly having regard to the mandate of Order 7 Rule 7 of the Code of Civil Procedure. In the considered opinion of this Court, the said prayer includes challenge to the termination notice dated 03/01/2006. It is obvious that the declaration that agreement is in subsistence can be granted only if it is held that termination notice is bad. It is a cardinal principal of law that if a plaintiff is entitled to a particular relief, then the same should not be denied only because the prayer clause is not properly worded.

17. It will also be profitable to refer to a recent judgment of the Hon'ble Supreme Court in the matter of ***K.S. Manjunath and others Vs. Moorasavirappa alias Muttanna Chennappa Batil Since Deceased by His Lrs and others***, reported in ***2025 SCC OnLine SC 2378*** whereunder the Hon'ble Supreme Court has dealt with its earlier judgment in the matter of ***I.S. Sikandar*** (supra) to hold that the ratio in the judgment of ***I.S.***

Sikandar (supra) will apply only to cases where the contract is terminated in accordance with agreement. However, if the contract is terminated *de hors*, the agreement, such termination will amount to breach of contract, in which case, prayer for declaration that termination is bad need not be made. In the present case, out of the total agreed sale consideration of Rs.6,25,000/- payment of Rs.5,30,000/- is proved. The sale-deed could not be executed since the suit property was shown as reserved for road. In such circumstances, it needs to be held that the termination of agreement is not justified and that termination will amount to breach of agreement offering cause of action for filing suit for specific performance.

18. Contentions of Mr. Tiwari, learned Advocate for the appellant with respect to need for specific challenge to termination notice are rejected, in view of the aforesaid. Substantial question of law No.3 is therefore answered against the

19. Substantial questions of law framed in the appeal while issuing notice are required to be answered in favour of respondent No.1 and against the appellant. Likewise, it needs to be held that the appellant/defendant No.3 has failed to prove alleged prior agreement of sale in his favour and that he is a *bona fide* purchaser for value.

20. Second Appeal is therefore dismissed with no order as to costs.

21. At this stage, learned Advocate for the appellant makes a request to extend the interim order dated 08/09/2021 for a period of eight weeks in order to enable the appellant to approach the Hon'ble Supreme Court.

22. Having regard to the fact that the interim order is operating over a period of four years, the same is extended till 28/02/2026, although learned Advocate for the respondent No.1 has strong objection for extending the same.

(ROHIT W. JOSHI, J.)