



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

WRIT PETITION NO.5041 OF 2023

Sanjay S/o Jagannath Gulhane .Vs. Sachin S/o Vasant Rao Gadhiwar and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. P.D. Sharma, Advocate for petitioner.

Ms Aparna Kshirsagar, Adv. h/f Mr. A.A. Dhawas, Adv. for respondent No.1.

CORAM : ROHIT W. JOSHI, J.

DATE : 06/10/2025

1. A decree for specific performance of contract was passed in favour of the present respondents in Special Civil Suit No.142 of 2008, vide judgment and decree dated 22.07.2013, passed by the learned Civil Judge Senior Division, Warora. The petitioner is the son of the original defendant, Jaymala Jagannathrao Gulhane. The defendant had expired while the civil suit was pending and the present petitioner along with his two brothers were brought on record as legal representatives. The suit was decreed on 22.07.2013 as mentioned above. Perusal of the judgment indicates that the present petitioner and other legal representatives did not lead evidence in the suit. The learned trial Court has passed the decree for specific performance of contract relying on the evidence brought on record by the plaintiffs/respondents. Findings as regards readiness and willingness are also recorded by the learned trial Court. While holding so, the learned trial Court has

taken into consideration the fact that although 21.09.2005 was stipulated as the date for execution of the sale deed, the property was not mutated in the name of the defendant, resulting in delay in execution of the sale deed. It is observed that, it was the responsibility of the defendant to get her name mutated in the revenue record. The learned trial Court has also accepted the contention of the plaintiffs/respondents that they were present before the concerned Sub-Registrar on 03.03.2006 for execution of the sale deed.

2. It will be pertinent to mention that the legal representatives of the defendant including the present petitioner had filed an appeal challenging the said decree along with an application for condonation of delay which was registered as Miscellaneous Civil Application No.22 of 2015. The said application was rejected by the learned First Appellate Court on 27.07.2016. The order dated 27.07.2016, refusing to condone the delay was subsequently assailed in Second Appeal No.08 of 2017 before this Court. The said appeal came to be dismissed vide order dated 12.09.2017. The said order is confirmed by the Hon'ble Supreme Court vide order dated 25.01.2018. The contention of the petitioner is that the plaintiffs/respondents were not present before the Sub-Registrar on 03.03.2006 as contented by them before the learned trial Court. He has stated that this amounts to

obtaining the decree for specific performance by fraud. The petitioner has placed reliance on communication dated 02.07.2019 issued by the Public Information Officer in the office of Sub-Registrar Class-I, Chimur. It appears that, the petitioner has sought information with respect to inward number and registration of the application dated 03.03.2006 by Sachin, the respondent No.1. In response to the said letter, the Public Information Officer has stated that inward entry in respect of said letter is not available on record. On the basis of this, the learned Advocate contends that the judgment by the learned trial Court is obtained by fraud. The learned trial Court has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Jai Narain Parasurampuriah (Dead) ..vs.. Pushpa Devi Saraf*, reported in **2006(7) SCC 756**, to contend that the judgment obtained by fraud is a nullity and can be assailed even in collateral proceedings.

3. While there can be no dispute with the proposition that a judgment obtained by fraud is a nullity, in the considered opinion of this Court, the mere fact that the entry pertaining to the letter dated 03.03.2006 was purportedly not found in the inward register does not mean that the judgment was obtained by fraud. It will be pertinent to state that, the learned trial Court has delivered the judgment by taking into consideration all the facts and circumstances of the case. The legal representatives of the

original defendant filed an appeal after a delay of three years, which was dismissed due to their failure to satisfactorily explain the delay. The order rejecting the application for condonation of delay has attained finality before the Hon'ble Supreme Court. Perusal of the application indicates that, apart from the contention that the application dated 03.03.2006 does not find reference in the inward register, no other ground is pressed to contend that the judgment was obtained by fraud. In the considered opinion of this Court, the learned Executing Court has rightly rejected the application, holding that the material brought on record by the petitioner is grossly inadequate to make out a case of fraud. It will also be appropriate to refer the judgment of the Hon'ble Supreme Court in the matter of *Shri Krishnam ..vs.. Kurukshetra University, Kurukshetra*, reported in **AIR 1976 SC 376**, wherein it is held that a fact which could have been discovered by the exercise of due diligence does not constitute fraud. The petitioner and his two brothers had the opportunity to contest the suit. In view of the above, no case for interference is made out. Accordingly, the writ petition is **dismissed**.

(ROHIT W. JOSHI, J.)