

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

SECOND APPEAL NO.502/2019

Sau. Rekhabai w/o Manoranjan Daharwal and another
...Versus...
Chandumal s/o Chhataram Golani

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

Court's or Judge's orders

Mr. A.D. Sonak, Advocate for appellants
Mr. S.A. Sahu & M. Anilkumar, Advocates for respondent

CORAM : ROHIT W. JOSHI, J.
DATE : 20/11/2025

1. The present second appeal is filed by the original defendants against concurrent decrees for specific performance of contract. Agreement in question is dated 11/05/2006. The agreement dated 08/12/2005 pertains to a residential plot located within an unauthorized layout. The total sale consideration is Rs.4,12,800/-, out of which an amount of Rs.80,000/- was admittedly paid by the plaintiff to the defendant at the time of execution of the agreement. Since property is located within an unauthorized layout, the parties also agreed that in the event of regularization of property, the area of the plot is reduced, the sale consideration would be reduced appropriately. Likewise, there is also reference to the regularization charges and development charges to be paid to the Nagpur Improvement Trust. It is obvious from reading of the agreement, as also the evidence on record that execution of sale-deed depended upon regularization of plot by the Planning Authority. Agreement provides that the sale-deed was

to be executed on or before 08/02/2006. However, it is not in dispute that the relevant documents required for execution and registration of sale-deed could not be procured till the said date. It is clear from reading of the agreement that the responsibility of obtaining the relevant documents was on the defendant.

2. The plaintiff had issued notice to the defendant on 11/03/2006, calling upon her to discharge her obligation under the agreement by obtaining relevant documents. In response to this, the defendant issued a notice dated 17/03/2006, terminating the agreement. The plaintiff had filed suit for specific performance of contract on 28/08/2006 within a period of around five months from the date of receipt of notice of termination. Both the Courts have concurrently held that the defendant was unable to obtain relevant documents for execution and registration of the sale-deed. Perusal of evidence will demonstrate that indeed the documents required for execution and registration of sale-deed were not available. The covenant stipulating outer limit for execution and registration of sale-deed will have to be read in conjunction with the requirement for obtaining necessary documents for completing the sale transaction. The clause cannot be read in isolation. The finding by both the learned Courts that it was not possible to execute and register the sale-deed within the stipulated time frame is a finding of fact recorded on just and proper appreciation of evidence.

3. The right of the defendant to refuse specific performance of contract after the stipulated date will be subject to condition that the defendant discharges all

obligations regarding obtaining requisite documents for completing the said transaction. Therefore, although the agreement states that in the event the sale transaction is not completed before stipulated date, the defendant will be at liberty not to execute the sale-deed in favour of the plaintiff, the said right will not be available in the facts of the present case, since the defendant could not obtain relevant documents for completing the sale transaction.

4. In this backdrop, the following substantial question of law, which is framed, needs to be answered :-

Whether Courts below were justified in decreeing the suit for specific performance of the contract in absence of prayer for seeking declaration that termination by the appellant was bad in law in the teeth of the fact that the appellant by notice dated 21.03.2006 cancelled the agreement dated 08.12.2005 ?

5. The law laid down by the Hon'ble Supreme Court in the matter of ***I.S. Sikandar (Dead) by L.Rs. Vs. K. Subramani and others***, reported in ***2013 (15) SCC 27*** is now further clarified by the Hon'ble Supreme Court in the case of ***K.S. Manjunath and others Vs. Moorasvirappa Muttanna Chennappa Batil Since deceased by His Lrs. And others (Civil Appeal No.13507-13508 of 2025, decided on 10/11/2025)***.

6. The defendant was completely unjustified in issuing termination notice. The termination of contract in the facts of the present case will in fact amount to breach of agreement, as held by the Hon'ble Supreme Court in the case

of *K.S. Manjunath* (supra).

7. In view of the above, the substantial question of law framed in the present appeal deserves to be answered in favour of the respondent/plaintiff. Second Appeal is, therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar