



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

SECOND APPEAL NO.323 OF 2017
WITH
CROSS OBJECTION NO. 87 OF 2018

APPELLANTS :- Datta Mahadu Wankhee (Dead)
(Orig. Plaintiff) Through L.Rs.

- 1) Smt. Saraswati W/o Datta Wankhede
Age about 46 years, Occ. Agriculturist
- 2) Vishal Datta Wankhede
Age about 25 years, Occ. Agriculturist
- 3) Subham Datta Wankhede
Age about 20 years, Occ. Agriculturist
- 4) Ku. Manisha Datta Wankhede
Age about 18 years, Occ. Household
All R/o. Baldi, Tah. Umarkhed, Dist.
Yawatmal

..VERSUS..

RESPONDENT :- Bhaurao Piraji Shirdkar
(Orig. Defendant) Age about 67 years, Occ. Agriculturist,
OBJECTOR R/o. Baldi, Tah. Umarkhed, Dist.
Yawatmal

Mr. I. G. Meshram, Advocate for Appellants.
Mr. K. S. Narwade, Advocate for the Respondent.

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

DATE : **06.10.2025**

JUDGMENT :

1) Heard finally with consent of learned counsel for
the respective parties.

2) The appellant is the original plaintiff. On 07.07.1987, the plaintiff had entered into an agreement of sale with the respondent/defendant with respect to land bearing Survey No.168/2, admeasuring about 1.26 H.R., of Village Baldi, Tah. Umarkhed, Dist. Yavatmal. The total sale consideration agreed between the parties was Rs.21,000/-. The aforesaid property, was joint Hindu Family Property of the plaintiff. After the agreement dated 07.07.1987, there was a partition in the family of the plaintiff and only 0.60 H.R., of land came to the share of the plaintiff. Thereafter, a fresh agreement came to be executed between the parties on 19.02.1990, in terms where of the defendant agreed to purchase the remaining 0.60 H.R., land, which had fallen to the share of the plaintiff, for a consideration of Rs.15,500/-. This 0.60 H.R. land is the suit property.

3) Since the plaintiff did not execute sale deed in favour of the defendant, as per the agreement a notice was issued on behalf of the defendant. The plaintiff thereafter filed a suit for perpetual injunction restraining the defendant from disturbing his possession over the suit property. After

the application for temporary injunction was rejected by the learned Trial Court, the plaint was amended in order to incorporate prayer for possession.

4) It will be pertinent to mention that under both the agreements, there is a categorical statement that the plaintiff, as vendor, delivered possession of the land under agreement to the defendant, as purchaser.

5) In the suit filed by the plaintiff, the defendant also filed a counterclaim for specific performance of contract.

6) After framing issues, recording evidence and hearing the rival arguments, the learned Trial Court dismissed the counterclaim on the ground that the same was barred by limitation. However, the learned Trial Court found favour with the contention of the defendant that he was placed in possession of the property in terms of the agreement in question and was entitled to protect the possession. The learned Trial Court held that the possession of the defendant over the suit property is lawful possession and dismissed the suit for possession filed by plaintiff.

7) Aggrieved by the said decree passed by the learned Trial Court, the plaintiff filed an appeal, which was also dismissed, confirming the decree passed by the learned Trial Court. The defendant had also filed a cross-objection in the said appeal, which was also dismissed. The original plaintiff has filed the present Second Appeal, aggrieved by the said concurrent decrees dismissing his suit for possession. In the present Second Appeal as well, the defendant has filed a cross-objection. It will be pertinent to mention that, vide order dated 10.04.2018, following substantial question of law came to be filed in the present second appeal:-

“Having held that the plaintiff was owner of the suit land being his ancestral property and also having rejected the counterclaim of the defendant regarding specific performance, whether the Courts below were justified in dismissing the suit for possession filed by the plaintiff?”

8) Both the learned Advocates agreed to argue the appeal and cross-objection finally and accordingly, the appeal and cross-objection are taken up for final hearing at the stage of admission.

9) The agreements in question are dated 07.07.1987 and 19.02.1990. The agreements are unregistered documents. Both these agreements are prior to the amendment in the Transfer of Property Act, whereby registration of an agreement was made compulsory in order to seek protection under Section 53-A of the said Act.

10) It will be pertinent to mention that although reference to Section 53-A of the Act is not made by the learned Courts, nonetheless both the Courts have concurrently held that the agreement is duly proved; that the defendant was placed in possession of the suit property under the agreement and that he has paid the entire agreed sale consideration. The terms of sale are also established from contents of the agreement. It is also well settled that even if a suit for specific performance may be barred by limitation, the purchaser under the agreement can take shelter under Section 53-A of the Act for protection of his possession, if he is in a position to demonstrate that he was ready and willing to perform his part of the contract or has already performed his part of the contract and accordingly satisfies the

requirement of Section 53-A of the Act. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in the matter of **Shrimant Shamrao Suryawanshi...Vs...Pralhad Bhairoba Suryawanshi** reported in **2002(2), MhLJ, 1**, on which the learned Advocate for the defendant has rightly placed reliance.

11) It is therefore necessary to examine as to whether essential ingredients of Section 53-A of the Act are made out. Both the learned Courts have recorded concurrent findings that the agreement in question is duly proved. Both the Courts have also recorded findings that the defendant is in possession of the suit property on the basis of agreement of sale and, therefore, his possession cannot be termed to be illegal. In order to protect possession under Section 53-A of the Act, the defendant must establish that he is in possession of the property pursuant to the agreement of sale and has performed or was always ready and willing to perform his part of the contract and further that the terms and conditions of sale are borne out from the agreement. In the case at hand, as stated above, the case of the defendant is that

earlier agreement was entered into with respect to the entire land admeasuring 1.26 H.R., for consideration of Rs.21,000/- and that, in view of refusal on the part of plaintiff's brother, it was agreed that the property will be partitioned and thereafter the plaintiff will sell the property which comes to his share under the property.

12) It is stated that there was a partition between the plaintiff and his brother and accordingly, plaintiff's name was recorded with respect to the suit property in revenue records on 10.08.1988 and that thereafter, new agreement was entered into between the plaintiff and the defendant with respect to the suit property on 19.02.1990. The defendants contend that initial amount of Rs.7,000/-, which was paid under the earlier agreement, was agreed to be adjusted against consideration payable under the subsequent agreement and further that sum of Rs.8,500/- was paid to the plaintiff.

13) The defendant has examined Maroti Thamke, who was a witness to the first agreement, as D.W. 2 and Bhaurao Tipre, who was a witness to the subsequent

agreement, as D.W. 3. Apart from the said witnesses, one more witness, namely Dashrath Dudhe, is examined in order to prove the transaction between the parties. Both the Courts have concurrently held that the defendant had proved his case of entering into the agreement of sale with respect to the second agreement and payment of balance sale consideration of Rs.8,500/- to the plaintiff on the date of subsequent agreement. The findings of fact with respect to payment under the subsequent agreement are supported by the evidence of independent witnesses who are found to be creditworthy by both learned Courts.

14) It will be pertinent to state that the case of plaintiff is one of fraud. He contends that he had borrowed a sum of Rs.1,000/- from the defendant and the defendant had obtained his signature on blank paper and used the same in order to fabricate the agreement to sell. However, perusal of the plaint averments will demonstrate that these pleadings are with respect to one document only. Undisputedly, there are two agreements, one is executed on 07.07.1987 and the other is executed on 19.02.1990. The explanation of the

plaintiff, in the plaint, even if it is taken on its face value, is silent with respect to reason for signatures on two different documents. The plaintiff has clearly failed to prove case of fraud. Rather the pleadings taken on face value are insufficient to make out a case of fraud

15) The case of the appellant/plaintiff is that he was dispossessed from the suit property without following due process of law. However, the pleadings in this regard are absolutely vague. The learned Trial Court has rightly held that the plaintiff had failed to make out a case of forcible dispossession. These findings of fact which, are recorded after appreciating the pleadings and evidence on record, have been confirmed by the learned First Appellate Court. Both the Courts have concurrently held that the defendant was placed in possession of the suit property under the agreement in question and that the plaintiff had failed to establish the case of dispossession.

16) The concurrent findings of fact recorded by both the learned Courts below are based on documents which are undisputedly signed by the plaintiff. The contents of the

documents are duly proved by examining witnesses. The said witnesses have stood the test of cross-examination.

17) In view of the above, it appears that the defendant was placed in possession of the suit property in part performance of the agreement of sale dated 19.02.1990; the terms of the sale can be made out from the contents of the agreement in question; and that the defendant has paid the entire agreed sale consideration of Rs.15,500/- signifying that he has performed his part of the contract. In the considered opinion of this Court, the defendant is entitled to protect his possession under Section 53-A of the Act and, therefore, although the plaintiff is owner of the suit property and the counterclaim for specific performance is dismissed as barred by limitation, both the learned Courts have rightly dismissed the suit for possession filed by plaintiff.

18) The substantial question of law framed in the appeal is thus answered in favour of the defendant and against the plaintiff. The suit for possession filed by the plaintiff, therefore, deserves to be **dismissed**.

19) The following substantial question of law in cross-objection is framed vide order dated 07.09.2018:-

“Whether the Courts below erred in not recording finding on the issue as regards the requirement of prior permission of the learned Collector before execution of the sale deed in respect of the suit land for preventing fragment of the agricultural land?”

20) As regards the counterclaim for specific performance of contract, the plaintiff has filed suit for possession on 27.03.1991, which signifies a refusal on his part to execute the sale deed in terms of the agreement. The counterclaim is filed in the year 2009. The defendant was served with the suit summons and has filed written statement on 05.08.1991, which signifies that he was served with the suit summons before 05.08.1991. Thus, limitation for filing counterclaim expired before 05.08.1994. The counter claim is clearly barred by limitation and is rightly rejected by both the learned Courts. Assuming that permission under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, was required, the defendant should

have filed suit within limitation and sought decree for specific performance. Conditional decree could have been passed directing specific performance subject to permission from competent authority under the Fragmentation Act. The counterclaim is filed after around 18 years and is clearly time barred.

21) The substantial question of law framed in the counter claim is thus answered in favour of the plaintiff and against the defendant. The counter claim, therefore stands **dismissed.**

(ROHIT W. JOSHI, J.)

Tanmay...