



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

SECOND APPEAL NO.127 OF 2025

APPELLANTS

Orig. Defendants

:- 1) Sanghamitra w/o. Lokchand Ilamkar,
Aged about 63 yrs. Occ.- Agriculturist

2) Lokchand s/o. Bhokaji Ilamkar,
Aged about 69 yrs. Occ.- Agriculturist
Both are R/o Village-Dhanla(Channa)
Tahsil-Lakhani, Distt. Bhandara

..VERSUS..

RESPONDENT

Orig. Plaintiff

:- Homraj s/o. Wasudeo Ganvir.
Aged about 52 yrs. Occ.-Cultivator
R/o Village Jambhali (Sadak).
Tahsil-Sakoli District-Bhandara.

Mr.A. P. Mishra, Advocate for Appellant.

Mr. Nitin Vyawahare, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 09.10.2025

ORAL JUDGMENT :

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

2) The present Second Appeal arises out of concurrent decrees for specific performance of contract passed against the present appellants. The appellants had entered into an

agreement of sale dated 05.06.2010, *inter alia*, agreeing to sell 0.56 H.R., of land out of 0.96 H.R. of land bearing Gat No. 408. This land was the subject matter of a suit for partition between appellant No.1, her sisters and mother. In execution of the said decree for partition 0.48 H.R., of land has come to the share of appellant No.1. In view of this development, a subsequent agreement dated 16.12.2010, came to be executed between the parties. The first two agreements, as can be seen from paragraph No.3 of the written statement, are not in dispute. Subsequently, another agreement dated 22.08.2011 was executed between the parties for extension of time to execute and register the sale deed which is disputed by the defendants. The agreed sale consideration is Rs.1,25,000/-, out of which Rs.1,10,000/- is admittedly paid by the respondent/plaintiff to the appellants/defendants.

3) The learned Trial Court has decreed the suit holding that the agreements were duly proved and that the plaintiff was ready and willing to perform his part of the contract all throughout.

4) Aggrieved by the said decree for specific performance of contract, the defendants preferred an appeal, which also met with the same fate. Both the learned Courts have concurrently held that the agreements in question were duly proved and that the plaintiff was ready and willing to perform his part of the contract. The said concurrent decrees for specific performance of contract are the subject matter of challenge in the present Second Appeal.

5) Mr. Mishra, learned Advocate for the appellants, has raised a contention that the agreement of sale contains a recital that possession of the suit property was delivered to the plaintiff under the agreement and the agreement is, therefore, a “conveyance”, as such the document was required to be registered in view of Section 17 of the Registration Act. He contends that, in view of Section 49 of the Registration Act the document is inadmissible and, therefore, the suit was liable to be dismissed.

6) The contention is liable to be rejected in view of the proviso to Section 49 of the Registration Act, which clearly stipulates that an unregistered agreement can be read in

evidence in a suit for specific performance of contract.

7) The proviso is sought to be dealt with by Mr. Mishra contending that the said proviso will be applicable only in cases where the agreement of sale is not coupled with possession.

8) In this regard, it will be appropriate to refer to Section 17(1A) of the Registration Act, 1908 which read as under :-

“The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.”

9) Perusal of the provision will indicate that if an agreement is coupled with possession and is unregistered, then it cannot have any effect for the purpose of Section 53-A

of the Transfer of Property Act. This is the only restriction imposed. There is no other provision under the Registration Act which makes registration of agreement of sale coupled with possession compulsory and/or which provides that an unregistered agreement of sale coupled with possession will not be admissible in evidence.

10) The requirement of registration is, therefore, not applicable in a suit for specific performance of contract, where the document is to be proved for the purpose of enforcement of the contract. In a situation where an agreement of sale is coupled with possession and it is not registered, the prospective purchaser cannot seek protection under Section 53-A of the Act. However, the document will be admissible in evidence in a suit for specific performance of contract to prove the contract.

11) The next limb of the argument of the learned Advocate is that an agreement of sale coupled with possession is a conveyance within the meaning of Article 25 in Schedule-I of the Maharashtra Stamp Act, 1958 and therefore registration of document was compulsory. The

Registration Act and Maharashtra Stamp Act are two separate enactments. The definition of “conveyance” under Article 25 of the Stamp Act cannot be read into the provisions of Registration Act. The provision of Article 25 will be relevant only for the purpose of payment of stamp duty.

12) It is observed that the documents are not adequately stamped. Had an objection been raised to the admissibility of the documents while the same were marked during the course of evidence, the contention of Mr. Mishra that they were not admissible for want of adequate stamp duty could be accepted. However, it is undisputed that such an objection was not raised while the documents were marked as Exhibit. Had such an objection been raised while the documents were being exhibited, the plaintiff could have considered impounding the documents by making payment of appropriate stamp duty along with interest and penalty. In view of Section 35 of the Maharashtra Stamp Act, such objection cannot be entertained once the document is marked as an exhibit.

13) The second contention, with respect to the

documents being inadequately stamped and therefore, inadmissible, is liable to be rejected.

14) Mr. Mishra further contends that the agreement is not enforceable in view of the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. I am afraid the said contention could not have been entertained by the learned Civil Court, as also this Court while hearing a said Second Appeal arising out of the decree for specific performance of contract.

15) Jurisdiction of the Civil Court to decide issues which the authorities under the Fragmentation Act are competent to decide is clearly barred in view of Section 36-A of the Fragmentation Act. Likewise, Section 36-B provides that if any issue relating to the provisions of the Fragmentation Act, which is required to be decided by authorities under the said Act, arises for consideration in a suit, the Civil Court shall refer such issue(s) to the competent authority under the Act for determination of the same. The legal position in this regard is clarified by the judgment of this Court in the matter of *Geetabai Vs. Kailash*, reported in

(2019) 1 AIR Bom. R 538 (Paragraphs 14 and 16).

16) It will also be pertinent to mention that decree in a suit for specific performance of contract is in the nature of a preliminary decree and the suit is deemed to be pending even after initial decree for specific performance is passed. Till this stage, the Court is only required to examine as to whether the parties have entered into the agreement, whether the agreement is enforceable and is the plaintiff entitled to relief of specific performance or not.

17) In view of the above, the objection pertaining to the Fragmentation Act could not have been entertained by the Trial Court at this stage.

18) There are two provisions under the Fragmentation Act, which impose restrictions on right to transfer, viz. Section 7 and Section 31. Section 7 is attracted in cases where a notice, as contemplated under Section 6(2) of the Act, is recorded in the relevant revenue record of rights or village record. The pleadings and evidence of defendants are silent in this regard. The bar under Section 31 applies only with respect to a holding which is allotted under the

provisions of the Fragmentation Act. It is also not the case of defendants that the holding (suit property) was allotted under the Fragmentation Act. Both, these provisions will, therefore, not be applicable. The legal position in this regard is clarified by judgment of this Court in the matter of *Putlabai Lakhu Pawar...Vs...Shiva Dhondi Pawar*, reported in *(1980) MhLJ 547*. It will also be profitable to refer to the judgment in the matter of *Jairam Baban Makode...Vs...Bhagirathabai Mitharam Patil*, reported in *2005 (2) AllMR 360*, wherein it is laid down that the bar Under Section 7 will not be attracted unless the notice contemplated under Section 6(2) is published and given in accordance with the procedure prescribed. Relevant observations in paragraph No.5 of the judgment are reproduced herein below for ready reference:-

“5. In the thus apparent that until and unless the land is notified as fragment as contemplated by Section 6(2) of the Fragmentation Act, bar under Section 7 cannot be pressed into service. The provisions of sub-section (2) of Section 6 prescribes notice of every entry made under sub-section (1) as given in the manner prescribed for giving notice of entry in the register of Mutation. The

said procedure for giving notice of entry in the Mutation register is mentioned in Section 150(2) of Maharashtra Land Revenue Code and it requires a complete copy of entry to be displayed at a conspicuous place in the Chavadi and also written intimation to be given to all persons appearing from the record of rights or register of mutations to be interested in mutation. Thus, it is apparent that here, after holding the land to be a fragment under Section 6(1) of Fragmentation Act, notice thereof ought to have been published in a conspicuous place in the chavdi and also should have been given in writing to at least owners of that land. The Sub-Divisional Officer as also the revisional authority have not recorded any finding in this respect. Until and unless the finding that the land was notified as fragment as contemplated by Section 6(2) of the Fragmentation Act is reached, bar under Section 7(1) could not have been invoked and could not have been utilised by these authorities to set aside the sale deeds. Thus, very jurisdiction fact is found to be missing in these orders”

19) In the present case, there is no pleading or evidence regarding notice under Section 6(2).

20) That apart, it is also necessary to take into consideration as to what is the standard area prescribed under the Act in a particular local area. This also, is essentially a question of fact for which appropriate pleadings and evidence are required which are pertinently absent in the

present case.

21) A contention is also raised that although defendant No.1 has 0.48 H.R., share in the land bearing Survey No.408, the agreement was for 0.56 H.R., of land. Mr. Mishra, refers to Section 26 of the Specific Relief Act to contend that this mistake, which was mutually committed while mentioning the area of the suit property in the agreement dated 05.06.2010, was required to be corrected by filing a suit as contemplated under Section 26 of the Specific Relief Act. He contends that the parties could not, on their own, correct the agreement as is done under the subsequent agreement dated 16.12.2010.

22) I am afraid the contention cannot be accepted. Where the parties are *ad-idem* on a certain mistake and deem it appropriate to correct the mistake mutually, it will be absolutely unnecessary that a civil suit must be filed. The contention with respect to Section 26 is also, therefore, rejected.

23) Mr. Mishra then contends that admittedly, defendant No.2 is not the owner of the suit property, and yet

a decree for specific performance of contract is passed against him. Undisputedly, defendant No. 1 is the wife of defendant No.2. She is the undisputed owner of the suit property.

24) The decree for specific performance is passed against defendant Nos. 1 and 2 since both are parties to the agreement to sell. Since defendant No.1, who is the owner of the property, is also directed to execute the sale deed under the decree for specific performance of contract, the contention of Mr. Mishra is technical in nature and, therefore, cannot be entertained in view of Section 99 of the Code of Civil Procedure, 1908.

25) In that view of the matter, in the considered opinion of this Court, no substantial question of law arises for consideration in the present Second Appeal. The Second Appeal stands dismissed, with no order as to costs.

(ROHIT W. JOSHI, J.)