



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

SECOND APPEAL NO. 296 OF 2014.

Yashodabai w/o Batkuji Devani,
Aged about 51 years, Occupation
Household and Agriculturist, resident
of Kapdia Cottage Room No.08,
Mahadeo Desai Road, Kandiwali (W),
Mumbai.

.....

APPELLANT.

VERSUS

Nandkishor s/o Gopaldas Sharma,
Aged about 28 years, Occupation
Agriculturist, resident of Kavthal,
Tahsil Sangrampur, District Buldhana. ...

.RESPONDENT.

Mr. S.R. Deshpande, Advocate for the Appellant.
Mr. N.S. Warulkar, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.

CLOSED FOR JUDGMENT ON : 09.05.2025

JUDGMENT PRONOUNCED ON : 23.05.2025

JUDGMENT :

The appellant in the present Second Appeal is aggrieved by the concurrent decrees for possession passed against her. The appellant is the original defendant and the respondent is the original plaintiff. The plaintiff is owner of the suit property which is an agricultural land bearing Gut No.131, ad-measuring 2.72 HR, situated at village Kavthal, Tahsil Sangrampur, District Buldhana. The defendant had entered into an agreement of sale dated 18.04.2006 with the plaintiff, inter-alia agreeing to sell the suit property for a total consideration of Rs.3,50,000/-. The plaintiff has placed the defendant in possession of the suit property on the date of execution of the agreement of sale. Out of the total sale consideration of Rs.3,50,000/-, the defendant has paid an amount of Rs.3,00,000/- to the plaintiff on the date of execution of the agreement. It is also necessary to state that the suit property was situated in benefit zone of Jeegaon Resettlement Project, as per the provisions of the Maharashtra Project Affected Persons (Rehabilitation) Act, 1999 (hereinafter referred to as "the 1999 Act" for short), and resultantly there was a prohibition on sale of the suit property in view of Section 12 of the

1999 Act.

2. In view of the aforesaid, sale-deed could not be executed. The plaintiff has issued legal notice dated 03.05.2008 and 17.07.2008 to the defendant calling upon her to execute the sale-deed with respect to the suit property. Since the sale-deed was not executed, the plaintiff has filed a suit for possession against the defendant, which came to be registered as Regular Civil Suit No.120/2008. The case of the plaintiff is that since the defendant did not execute sale-deed with respect to the suit property, he was entitled for possession of the same being true and lawful owner. The defendant filed her written statement in the suit claiming that the sale-deed could not be executed in view of the bar under the 1999 Act. The defendant claimed shelter under Section 53A of the Transfer of Property Act to oppose the suit. The defendant also claimed that she was always ready and willing to perform her part of the contract, and therefore, the suit for possession was liable to be dismissed.

3. It will be pertinent to mention here that the defendant has raised a contention that she came to know that the prohibition against alienation of the properties covered under the Jeegaon Project

was lifted, and therefore, she was present in the Office of the Sub-Registrar, Sangrampur for execution of sale-deed along with two witnesses on 17.10.2006. She however claimed that the plaintiff did not turn up for execution of the sale deed.

4. The learned trial Court has framed the issues, recorded evidence of both the parties on the same, and thereafter on hearing the respective submissions has decreed the suit by a decree for possession with respect of the suit property in favour of the plaintiff. The learned trial Court has held that since the agreement was unregistered, protection under Section 53A of the Transfer of Property Act could not be claimed. It is also held that the agreement was unenforceable since it was not registered. As regards readiness and willingness, the learned trial Court has recorded findings against the defendant.

5. Aggrieved by the decree for possession passed against her, the defendant preferred First Appeal under Section 96 of the Code of Civil Procedure being Regular Civil Appeal No.39/2010. The said appeal came to be dismissed vide judgment and order dated 25.04.2014. The learned First Appellate Court has held that the defendant has pointed out breach of agreement and was therefore, not

entitled for protection of possession under Section 53A of the Transfer of Property Act. The learned First Appellate Court has also held that since the agreement was unregistered, the defendant could not have invoked Section 53A of the Transfer of Property Act, in view of the provisions contained in Section 17-A of the Registration Act. In this backdrop, the present Second Appeal came to be filed.

6. The Second Appeal came to be admitted vide order dated 26.08.2014 on the following questions of law :

“(i) Whether the findings of the District Court recorded in paragraph 15 casting negative burden on the appellant to show that in addition to the Government resolution dated 29th June, 2006 it was necessary for the appellant to show that the ban continued further, is unsustainable in law ?

(ii) The appellant having paid Rs.3,00,000/- out of total amount of Rs.3,50,000/- to the respondent can it be said in the facts of the case that the appellant was ready and willing to perform her part of contract ?

(iii) In view of the ban imposed by the Government resolution dated 29th June, 2006 can it be said that the sale deed was required to be executed within the stipulated period ?”

7. It will be pertinent to mention that although the defendant has raised a contention in the civil suit that she had learnt that the bar for execution of sale-deeds was lifted and remained present in the office of the concerned Sub-Registrar for execution of the sale-deed on 17.10.2006. She has filed two applications under Order 41 Rule 27 of the Code of Civil Procedure being Civil Application (S) Nos.280/2022 and 1324/2023 in this appeal, seeking permission to lead additional evidence with respect to Certificate dated 06.12.2021 issued by the Deputy Executive Engineer, Jeegaon Project Dam and Resettlement Department, Shegaon which records that the suit property is covered under the benefit zone of Jeegaon Project under 1999 Act, and Government Resolution dated 29.07.2006 to demonstrate that the prohibition under Section 12 of the 1999 Act is continuing.

8. It is undisputed that the agreement in question is an unregistered document. The agreement is dated 18.04.2006. Section 17[1-A] came to be introduced in Registration Act, 1908 by way of an amendment, which came into force w.e.f. 24.09.2001. The agreement is executed after the said amendment has come into force. In view of

Section 17[1-A], the agreement of sale cannot have any effect for the purpose of Section 53A of the Transfer of Property Act. It is therefore, obvious that the defendant cannot seek to protect her possession over the suit property by placing reliance on Section 53A of the Transfer of Property Act, even if it held that she was all throughout ready and willing to perform her part of the contract.

9. It is well settled that when the plaintiff in a suit for possession proves his title over the suit property, a decree for possession normally needs to be passed in his favour. It is undisputed that the plaintiff is the owner of the suit property. The only defence raised was opposing the claim of possession which is based on Section 53A of the Transfer of Property Act. However, since the agreement is unregistered, the protection under Section 53A cannot be claimed by the defendant. In that view of the matter, the suit filed by the plaintiff is rightly decreed.

10. The questions of law framed in the present appeal, even if they are answered in favour of the defendant/appellant, the final outcome of the suit will remain the same, inasmuch as even if it is held that the plaintiff was all the while ready and willing to perform

her part of the contract, and the sale-deed could not be executed only in view of the bar under Section 12 of the 1999 Act, the suit for possession will have to be decreed. In this regard, it needs to be stated that a substantial question of law is a question which if answered in favour of the appellant, must have the effect of overturning the decision of the suit in favour of the appellant. A substantial question of law is different from mere a question of law. If a question of law does not affect merits of the matter and its final outcome is merely a question of law and not a substantial question of law. Reference can profitably made in this regard to the judgment of this Court in cases of **Ramratan Pandurang Sunwani .vrs. Maya Ramratan Sunwani** reported in (2010 [4] Mh.L.J. 154 and judgment of Hon'ble Supreme Court in case of **Chandrabhan through L.Rs. .vrs. Saraswati and others** reported in [2022] 20 SCC 199.

11. In the present case, even if the questions of law which are framed in the appeal are answered in favour of the appellant/defendant, the final outcome of the suit will not undergo any change. The questions framed in the appeal therefore, cannot be said to be substantial questions of law. In this regard, reference needs to be

made to Section 100[5] of the Code of Civil Procedure, which provides that a Second Appeal shall be heard on question/s formulated in the appeal, and further, that at the stage of hearing of the appeal it will be open for the respondent to argue that the question of law so formulated is not involved in the appeal. The Hon'ble Supreme Court has in the matter of **Kiccha Sugar Company Ltd. .vrs. Roofrite Private Limited** reported in [2009] 16 SCC 280, held that if at the stage of final hearing of the appeal, the Court is of the opinion that the substantial question of law framed at the time of admission is not involved in the appeal, or does not arise for consideration, it will be open for the Court to hold so, however, a duty is cast on the Court to record reasons for the same. Similar view is taken by the Hon'ble Supreme Court in its judgment in case of **K.K. Kannan through L.Rs. .vrs. Koolivathukkal Karikkan Mandi** reported in [2010] 2 SCC 239. The above judgment is referred and explained in the judgment in case of **Tertuliano Renato de Silva .vrs. Francisco Lourenco** reported in 2018 [1] Mh.L.J. 135.

12. The two Civil Applications filed under Order 41 Rule 27 of the Code of Civil Procedure being Civil Application (S)

Nos.280/2022 and 1324/2023, seeking permission to lead additional evidence with respect to Certificate dated 06.12.2021 issued by the Deputy Executive Engineer, Jeegaon Project Dam and Resettlement Department, Shegaon which records that the suit property is covered under the benefit zone of Jeegaon Project under 1999 Act, and Government Resolution dated 29.07.2006 to demonstrate that the prohibition under Section 12 of the 1999 Act is continuing, even if they are allowed and permission is granted to the appellant to lead additional evidence with respect to the said documents and contents of documents are read in evidence, the final outcome of the suit will remain the same, the documents are therefore not relevant for adjudication of the suit, as also the present appeal, Civil Applications are therefore, rejected.

13. In that view of the matter, in the considered opinion of this Court, the substantial questions of law framed while admitting the present appeal are infact not involved, inasmuch as even if they are answered in favour of the appellant, the final outcome of the suit will remain the same. The Appeal is therefore, dismissed with no order as to costs.

14. It is informed by the learned Counsel for the appellant that the appellant has filed a suit for specific performance of the contract. The said suit shall be decided on its own merits and in accordance with law.

JUDGE