



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

**SECOND APPEAL NO.296 OF 2024**

Sumitra Narayan Bodhekar and ors **Vs.** Kisan Gajanan Bhute

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

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*Court's or Judge's Order*

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Mr. A. M. Chandekar, Advocate (appointed) for appellants.  
Ms. D. A. Thengre, Advocate for respondent Nos.1 to 4.

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

**DATE : 09.12.2025.**

. The present appellant had filed a suit for specific performance of contract against the present respondent. According to the plaintiff, agreement of sale dated 03.06.1994 was entered into between the plaintiff and defendant in terms whereof the plaintiff agreed to purchase the suit property which is an agricultural land admeasuring 1.21 H.R., land for a total consideration of Rs.15,750/-.

2. According to the plaintiff, an amount of Rs.15,000/- was already paid to the defendant at the time of execution of agreement. The plaintiff claims that, notice calling upon the defendant to execute the sale deed as per the agreement was issued on 04.09.2015 and in view of refusal on the part of the defendant suit for specific performance came to be filed on 11.12.2015. The plaintiff contends that he was placed in possession of the suit property under the aforesaid agreement.

3. The defendant filed a counter-claim in the suit seeking possession of the suit property, *inter alia* contenting that the plaintiff had taken forcible possession of the same.

4. It is not in dispute that the alleged agreement is not proved since the plaintiff did not file original document on record. The plaintiff also did not take appropriate steps for proving photo copy of the agreement. The foundation of the case of the plaintiff is the said agreement which she failed to prove. Apart from this although the agreement is dated 03.06.1994, first positive step for enforcement of the agreement appears to be taken on 15.09.2015, when notice calling upon defendant to execute sale deed was issued by the plaintiff.

5. The learned Courts have concurrently held that the plaintiff had not only failed to prove the agreement in question, which was disputed by the defendant, the inordinate delay on the part of plaintiff also indicated that he was not willing to perform her part of the contract.

6. Perusal of the judgments will indicate that plaintiff did not prove the agreement in question and also did not take appropriate steps for leading secondary evidence with respect to the said agreement. The finding recorded by both the learned Courts on this count is just and proper. The finding by the learned Courts with

respect to willingness on the part of plaintiff also appears to be proper since there is a silence of 21 long years on the part of the plaintiff in taking steps for enforcement of the agreement.

7. Learned Advocate for the appellants draws attention to application filed in the present second appeal under Order 41 Rule 27 of the Code of Civil Procedure, 1908. The application is filed in order to bring 7/12 extracts of a suit property on record in which entries regarding possession of the plaintiff over the suit property are recorded. The entries are based on agreement of sale. Since the agreement itself is not proved and both Courts have concurrently held that plaintiff failed to establish contents of the alleged agreement as also her willingness to go ahead with the transaction, no fruitful purpose will be served by permitting the plaintiff to lead additional evidence with respect to 7/12 extracts. It must also be stated that the 7/12 extracts are documents which were readily available and could have been filed on record before the learned Trial Court. The application of the plaintiff does not fall within the parameters prescribed under Order 41 Rule 27 of CPC. The application is therefore liable to be rejected. The second appeal also does not disclose any substantial question of law and is liable to be dismissed.

8. In view of the reasons recorded above, civil application and second appeal are dismissed with no order as to costs.

9. Fees of the appointed Advocate be quantified as per Rules.

(ROHIT W. JOSHI, J.)

*Tanmay...*