



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

SECOND APPEAL NO.388 OF 2022

Gopichand Babulal Kabliye Vs. Nanak Manoharlaji Gidwani

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

Court's or Judge's Order

Mr. V. S Bapat, Advocate for appellant.

Mr. P. V. Ganediwala, Advocate for non-applicant/respondent

CORAM : ROHIT W. JOSHI, J.

DATE : 24.11.2025.

. The present Second Appeal arises out of concurrent decrees for specific performance of contract. Both the learned Courts have granted a decree for specific performance of contract in favour of the plaintiff, who is respondent in the present appeal. The second appeal is preferred by the original defendant. The only contention pressed into service by the learned Advocate for the appellant/defendant is that, during the pendency of the litigation, one of his family members namely Gendabai, who is sister of the defendant/vendor had filed a suit for partition and separate possession with respect to the suit property, being Special Civil Suit No.33 of 2019, which is decreed vide judgment and decree dated 06.01.2025. The learned Advocate for the defendant, therefore, contends that the decree for specific performance has become unexecutable, inasmuch as the defendant/vendor has only 1/6th undivided share in the suit property.

2. In support of his contention, he has placed reliance on judgments of the Hon'ble Supreme Court in the matters of *Pasupuleti Venkateswarlu Vs. The Motor & General Traders*, reported in (1975) 1 SCC 770, *Rameshwar and others. Vs. Jot Ram and anr. And Rameshwar and othres Vs. Jot Ram and others*, reported in (1976) 1 SCC 194 and in the matter of *Kedar Nath Agrawal (Dead) and anr Vs. Dhanraji Devi (Dead) by LR's and anr.*, reported in (2004) 8 SCC 76 to contend that the right to relief must exist with the plaintiff from the date of cause of action till the final adjudication of the lis.

3. He contends that, in the present case, since a decree for partition and separate possession is passed with respect to the suit property the right of the plaintiff to obtain decree for specific performance of contract is not available from the date of passing of the said decree in the suit for partition. The learned Advocate contends that the plaintiff in the suit for partition had moved an application for addition of her name as party before the learned First Appellate Court, which was wrongly rejected by the learned First Appellate Court.

4. Per contra, the learned Advocate for the respondent/original plaintiff contends that the agreement in question is dated 09.02.2012, suit for specific performance of contract was filed on 25.02.2013, and the same was decreed on 20.02.2015. After the decree for specific performance was passed by the learned Trial Court the same was challenged by the appellant by filing an appeal being Regular Civil Appeal

No.188 of 2015 and that while this appeal was pending a collusive suit for partition was got filed by the defendant through his sister.

5. The learned Advocate draws attention to the judgment in Special Civil Suit No.33 of 2019 i.e. the suit for partition and separate possession and particularly paragraph No.9 thereof to contend that the present defendant had entered the witness box and categorically admitted each and every question put to him in cross-examination with respect to nature of the suit property and accordingly the parties in the said suit obtained a collusive decree for partition and separate possession with respect to the suit property. The learned Advocate further contends that the said decree for partition being a collusive decree, will not be binding on the plaintiff in the suit for specific performance of contract.

6. The learned Advocate for the appellant counters the contention stating that the plaintiff in the said suit had moved an application under Order I Rule 10 of the Code of Civil Procedure, 1908 for addition of the name of the present respondent, who is plaintiff in the suit for specific performance as a party defendant and that the said application was rejected in view of opposition of the present respondent. He contends that the proceedings cannot be said to be collusive since attempt to join the present respondent (plaintiff in suit for specific performance) was made in the suit for partition.

7. At the outset, it needs to be mentioned that the learned Advocate for the appellant/original defendant

has not advanced any submission with respect to correctness or legality of findings recorded by both the learned Courts with respect to the execution of agreement and readiness and willingness on the part of the respondent/plaintiff. The contention raised is based on a decree for partition and separate possession.

8. As regards the three decisions cited by the learned Advocate for the appellant, it is observed that all these judgments are pertaining to a case for eviction filed by landlord on the ground of *bona fide* need. The observations made by the Hon'ble Supreme Court in the aforesaid decisions are in the context of a case of bona fide need. The ratio of the said judgment cannot be applied to the present case.

9. It is well settled that, scope of enquiry in a suit for specific performance of contract is the execution of agreement and its enforceability. Question of title or title of the vendor cannot be decided in a suit for specific performance of contract. The learned Advocate for the respondent/plaintiff has rightly placed reliance on the judgment of the Hon'ble Supreme Court in ***Kannappa Chettiar V. Abbas Ali***, reported in (1952) 2 SCC 124 in support of this proposition.

10. In the considered opinion of this Court, the contention canvassed by the appellant/defendant cannot be entertained having regard to the scope of suit for specific performance of contract.

11. Needless to mention that persons who are not parties to the civil suit may avail their remedies

independently against the decree, if they are aggrieved by the same.

12. The contention of the learned Advocate for the respondent that the decree in a suit for partition and separate possession is a collusive decree is not being dealt with in the present appeal, having regard to the scope of suit for specific performance of contract. The said contention will be open to be canvassed in an appropriate proceeding.

13. Second Appeal is therefore, **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

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