



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

SECOND APPEAL NO.454 OF 2019

Appellants

(Not party to the suit on R.A.)

- : 1. Mangesh Subhashrao Madamwar,
Aged about 46 years,
Occupation – Business & Cultivator.
2. Rahul Subhashrao Madamwar,
Aged 40 years, Occupation – Business & Cultivator.
Both r/o Chowdhary Ward, Hinganghat,
Tah. Hinganghat, District Wardha.
– Versus –

Respondents

(Original Plaintiff on R.A.)

(Original Defendant)

- : 1. Prabhakar Natthuji Sambare,
Aged 62 years, Occ. Cultivator,
R/o Govindpur, Tah. Hinganghat, District Wardha.
2. Smt. Manda wd/o Dhondbaji Kosare,
Age 56 years, Occ : Household,
R/o c/o Pravin Dhondbaji Kosare,
Flat No.1, Survey No.49/2, Merchant Chamber,
Near Pathare High School, Chandan Nagar, Pune.

 Mr. M.G. Bhangde, Senior Advocate a/b Mr. R.R. Srivastava,
 Advocate for the Appellants.

Mr. S.K. Pardhy, Advocate for Respondent No.1.

CORAM : **ROHIT W. JOSHI, J.**
DATE : **10th OCTOBER, 2025.**

ORAL JUDGMENT :

Heard the learned Advocate for the parties.

02. The notice in the present appeal was issued vide order dated
 10/10/2019 on the following substantial questions of law:

- (i) In the light of law laid down by the Hon'ble Supreme Court in the case of **I.S. Sikandar (Dead) by L.Rs. vs. K. Subramani and others, reported in (2013) 15 Supreme Court Cases 27**, whether the suit filed by the respondent No.1 was maintainable in the absence of prayer for setting aside of cancellation of agreement?*
- (ii) Whether the Appellate Court was justified in holding that the respondent No.2 was an ostensible owner of the suit property in the absence of any such plea before the Court below, in the light of law laid down by Hon'ble Supreme Court in case of **Kammana Sambamurthy (Dead) by L.Rs. vs. Kalipatnapu Atchutamma (Dead) and others reported in (2011) 11 Supreme Court Cases 153**?*

Thereafter, following additional questions of law were framed vide order dated 08/10/2024.

- (i) Whether the first appellate Court committed error in dismissing the appeal instead of remanding the matter in the teeth of submission before the first appellate Court that respondent No.2 was negligent in defending the suit having lost interest in the suit property after execution of sale-deed in favour of the appellants?*
- (ii) Whether the trial Court was justified in holding that respondent No.1 was ready and willing to perform his part of contract?*

03. The appeal arises out of the decree for specific performance passed by the learned Civil Judge Senior Division, Wardha in Special Civil Suit No.54/2008, The said suit was filed by respondent No.1 against respondent

No.2. The present appellants are not parties to the said suit. The appellants had purchased the suit property while the suit for specific performance was pending from respondent No.2 and her four children.

04. The suit property, which is a house property, was owned by one Dhondbaji, who expired in the year 2001. This Dhondbaji was survived by five Class-I legal heirs i.e. present respondent No.2 (widow) and two sons and two daughters. It appears that initially after the demise of Dhondbaji, the suit property was mutated in the name of respondent No.2 alone. Respondent No.1 entered into an agreement of sale with respondent No.2 on 12/02/2007. He filed suit for specific performance against respondent No.2 on 29/02/2008 being Spl.C.S. No.54/2008. The said suit came to be decreed vide judgment and decree dated 23/04/2010. Pursuant to the said decree for specific performance of contract, sale-deed with respect to the suit property was executed and registered in favour of respondent No.1 on 01/04/2015 through the process of the Court.

05. In the meantime, while the suit was pending, the present appellants had purchased the suit property vide registered sale-deed dated 25/11/2008 from respondent No.2 and her four children. After coming to know about the decree for specific performance and the aforesaid sale-deed, the present appellants filed appeal being R.C.A. No.155/2017 challenging the said decree for specific performance of contract. The said appeal is dismissed

by the learned First Appellate Court vide judgment and decree dated 18/09/2019, which is subject matter of challenge in the present appeal. The learned First Appellate Court had dismissed the appeal on two grounds, namely that the appellants are the *lis pendens* transferees and therefore their sale deed was subject to outcome of civil suit in view of Section 52 of the Transfer of Property Act, 1882 (*hereinafter referred to as "TP Act" for short*), and the contention that respondent No.2 was not the sole owner of the suit property, is rejected holding that she was an ostensible owner of the suit property and, therefore, the sale-deed in favour of respondent No.1 is saved by Section 41 of the TP Act.

06. Mr. Bhangde, learned Senior Advocate appearing for the appellants contends that the learned First Appellate Court has erred in dismissing the appeal on the ground that the sale-deed in favour of the appellants is a *lis pendens* transaction. He contends that the other four vendors are not parties to the suit and, therefore, the entire sale deed cannot be set aside in view of Section 52 of the TP Act. As regards Section 41 of the TP Act, the contention of the learned Senior Advocate is that a person can claim the protection under Section 41 only upon satisfying the condition that he has taken reasonable care to ascertain that the transferor had the authority to transfer the property, and that he has acted in good faith. According to Mr. Bhangde, this cannot be treated as a pure question of law, as it necessarily

involves adjudication of facts over a period of time. He therefore contends that the matter is required to be remanded to the learned Trial Court by granting liberty to the plaintiff to amend the plaint suitably and permission to the present appellants to contest the suit.

07. *Per contra*, Mr. Pardhi, learned Advocate for respondent No.1 submits that the dispute in the suit was pertaining to the specific performance of contract. The scope of adjudication of the suit was, whether there was any agreement between the plaintiff and the defendant and whether the plaintiff is entitled for enforcement of the agreement entered into between the parties. He states that the dispute regarding title or the entitlement of vendors of the present appellants to inherit the property is foreign to the subject matter of the suit and, therefore, they have no right to challenge the decree for specific performance passed in favour of the respondents. In support of his contention, Mr. Pardhy has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of Kasturi v. Iyyamperumal and Ors. – AIR 2005 SC 2813, particularly paragraphs 14, 15, 17, 18, 19 and 21. The relevant observations of the Hon'ble Supreme Court in paragraph 14 of the judgment are reproduced herein below:

“14.....As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and the respondent Nos. 2 and 3 and whether contract was executed by the appellant and the respondent Nos. 2 and 3 for

sale of the contracted property, whether the plaintiffs were ready and willing to perform their part the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos. 2 and 3. It is an admitted position that the respondent Nos. 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the constructed property. It is, therefore, obvious as noted hereinafter that in the event the respondent Nos. 1 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession, which is not permissible in law. In the case of Vijay Pratap and others v. Sambha Saran Sinha and others reported, in 1996(10) SCC 53, this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character.

08. The objection raised by Mr. Pardhy deserves to be upheld in view of the law laid down by the Hon'ble Supreme Court. At the same time, it must also be clarified that in view of the same judgment relied upon by Mr. Pardhy, the judgment and decree for specific performance passed by the learned trial Court will not be binding on the present appellants as also their vendors

excluding respondent No.2-original defendant, since the said vendors other than defendant No.2 were not parties to the civil suit. It must also be clarified that the principle of *lis pendens*, which is statutorily recognized by Section 52 of the TP Act, will not be applicable to share of the vendors of the appellants other than the respondent No.2.-defendant, since they are not parties to the civil suit. It will be appropriate to reproduce relevant portion from aforesaid judgment relied upon by Mr. Pardhy, which reads as under :-

“As discussed above, in the event any decree is passed against the respondent Nos. 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind the respondent Nos. 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against the respondent Nos. 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos. 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since the respondent Nos. 1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted, property, a decree passed in such a suit shall not bind them and in that case, the respondent Nos. 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their

possession by taking recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or respondent No.3.”

09. In the light of the observations of the Hon’ble Supreme Court, it will be open for the appellant to take recourse to other appropriate remedies in order to challenge the decree passed in favour of respondent No.1-plaintiff as also to raise objection to the execution of the decree and, particularly, to the act of taking possession of the suit property during the course of execution proceedings. In fairness, Mr. Pardhy does not dispute that the appellants are in physical possession of the suit property.

10. In view of the aforesaid observations, in the considered opinion of this Court, the second appeal does not give rise to a substantial question of law and is accordingly dismissed as such, however, subject to clarification as made above.

(Rohit W. Joshi, J.)