



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

SECOND APPEAL NO.416 OF 2023

APPELLANT :- Vinod Dyandeo Gawande,
(Ori. Defendant)
(On R.A.) Age-54 yrs, Occu.- Agri.,
R/o – Tarhala Tq. Mangrulpir,
Dist. Washim.

..VERSUS..

RESPONDENT :- Ramrao Pandurang Chabuskwar,
(Ori. Plaintiff)
(On R.A.) Age-51 yrs, Occu.- Labour,
R/o - Tarhala Tq. Mangrulpir, Dist.
Washim

Mr. S. S. Rawate, Advocate for appellant.
Mr. G. R. Kothari, Advocate for the respondent.

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

DATE : **17.09.2025**

ORAL JUDGMENT :

. Notice in the appeal was issued vide order dated
06.11.2023 on the following substantial questions of law:-

“1) Whether the finding of the learned lower Courts as to the plaintiff’s readiness and willingness to perform his part of the agreement of sale can be said to be sustainable in view of Section 16(c) of the Specific Relief Act?

II) Whether the learned lower Courts failed to take into account that in the absence of the permission as required under Section 89 of Bombay Tenancy and Agricultural Lands Act, 1958 the agreement of sale is void, and has caused serious prejudice to the appellant?"

2) The appellant is the original defendant and respondent is the original plaintiff. The suit property is an agricultural land bearing Survey No. 78/2 admeasuring 1 H.R., situated at Mouza- Tarnala Tah. Mangrulpir, Dist. Washim.

3) The respondent had entered into an agreement of sale dated 10.07.2012 with the appellant. The respondent had agreed to purchase the suit property for a consideration of Rs. 2,10,000/-. It is not in dispute that on the date of agreement, the appellant received a sum of Rs. 1,50,000/- towards part of the sale consideration. The sale deed was to be executed on or before 10.06.2013.

4) It appears that the appellant was not inclined to execute the sale deed in favour of the respondent. Therefore, the respondent issued a notice dated 04.06.2013, calling

upon the appellant to remain present in the office of the concerned Sub-Registrar for execution of the sale deed. Since the sale deed is not executed, the respondent filed a suit for Specific Performance of Contract, being Regular Civil Suit No. 47 of 2013.

5) The learned Trial Court has refused to grant a decree for Specific Performance of Contract and instead granted decree for refund of Rs. 1,50,000/- with interest at the rate of 6% per annum from the date of the agreement till the date of realization of the said amount.

6) It will be pertinent to mention that the learned Trial Court has recorded positive finding on the aspect of readiness and willingness on the part of the respondent. Aggrieved by the aforesaid judgment and decree, the respondent preferred First Appeal, being Regular Civil Appeal No. 14 of 2017, the said appeal came to be allowed vide judgment and decree dated 08.09.2023.

7) The learned First Appellate Court has also held that the respondent had proved the agreement in question coupled with the fact that consideration of Rs. 1,50,000/- was paid to

the appellant on the date of execution of agreement. As regards, readiness and willingness, the learned Appellate Court has recorded that the conduct of the respondent in issuing notice calling upon the appellant to remain present for execution and registration of the sale deed before the concerned registrar and actually remaining present before the office of the concerned Sub-Registrar shows his intention to perform his part of the contract. It will be pertinent to mention that the learned Appellate Court has dealt with the contention as regards Section 89 of the Maharashtra Tenancy and Agricultural Land Act, 1958 stating that it is permissible to pass a conditional decree for specific performance, making the execution of the sale deed subject to condition of permission to be granted by the competent authority under the Tenancy Act.

8) Aggrieved by the said decree for specific performance passed by the learned First Appellate Court, the appellant who is the original defendant has filed the present second appeal.

9) As regards the first substantial question of law relating to Section 16(c) of the Specific Relief Act, both the learned Courts have concurrently held that the respondent/plaintiff was always ready and willing to perform his part of the contract. These findings are based on appreciation of pleadings and evidence. It is duly proved that the respondent/plaintiff had issued a notice for specific performance on 04.06.2013 and remained present in the office of concerned Sub-Registrar on 10.06.2013 for registration of the sale deed. It is not in dispute that, out of the total consideration of Rs. 2,10,000/-, a sum of Rs. 1,50,000/- was paid by the respondent/plaintiff to the appellant/defendant at the time of execution of agreement of sale. This payment was a single stroke payment which speaks about the financial capability of the respondent/plaintiff.

10) The learned Advocate for the appellant/defendant has drawn attention to the cross-examination of the respondent/plaintiff to contend that he had avoided to produce documentary evidence pertaining to his financial capability on record. Perusal of the cross-examination will

demonstrate that the answers given in response to the said suggestion that the respondent/plaintiff is ready to produce bank account statements. The learned Advocate states that bank account statements were not produced. On this basis, the learned Advocate states that the respondent/plaintiff failed to establish the readiness and willingness.

11) The said contention cannot be accepted in a Second Appeal. As stated above, the respondent/plaintiff has made single stroke payment of Rs. 1,50,000/- and merely an amount of Rs. 60,000/- remained to be paid. The fact that advance notice for registration of sale deed was issued by the respondent/plaintiff and he was present on the relevant day before the sub-registrar is duly proved.

12) Both the Courts have appreciated the evidence in recording finding of fact in favour of the respondent/plaintiff on this aspect. Such findings of fact which is based on appreciation of evidence, cannot be interfered with while exercising jurisdiction under Section 100 of Code of Civil Procedure.

13) In view of above, the first substantial question of law deserves to be answered in favour of the respondent/plaintiff.

14) As regards the second substantial question of law with respect to permission under Section 89 of the Maharashtra Tenancy and Agricultural Lands Act, 1958, It is not in dispute that the respondent/plaintiff is not an agriculturalist and therefore, not entitled to purchase agricultural land, without prior permission from the competent authority under the Tenancy Act. It is well settled by catena of decisions of this Court as also of the Hon'ble Supreme Court of India that in such cases, a conditional decree for specific performance can be granted, directing execution of the sale deed subject to permission from the competent authority.

15) The learned Appellate Court has rightly dealt with this legal position in paragraph 17 of the judgment, however, a perusal of the operative order in the judgment and the decree demonstrates that the said condition is not included therein. It is well settled that a decree must always be in

conformity with the judgment. In that view of the matter, the operative order and decree passed by the learned First Appellate Court needs to be modified, directing that execution of sale deed shall be subject to permission by competent authority under the Tenancy Act, as contemplated by Section 89 of the Maharashtra Tenancy and Agricultural Lands Act, 1958. The second substantial question of law is answered accordingly.

16) In that view of the matter, the appeal is partly allowed by modifying decree dated 08.09.2023 passed by the learned District Judge-1 Mangrulpir in Regular Civil Appeal No. 14 of 2017 as under:-

4. On payment of balance consideration amount of Rs. 60,000 (Rs. Sixty Thousand only) by the plaintiff within one month from today, the defendant shall execute sale deed of the suit land survey No. 78/2 adm. 1 H more particularly described in para No. 1 of the plaint and shall deliver possession of the suit land to the plaintiff. This will be subject to permission to purchase

agricultural land being granted by the competent authority under Section 89 of the Maharashtra Tenancy and Agricultural Lands Act, 1950. In the event, the permission is refused, the defendant shall refund amount of Rs. 1,50,000/- to the plaintiff with interest at the rate of 6% per annum from the date of agreement i.e. 10.07.2012 till the date of realization of the said amount.

(ROHIT W. JOSHI, J.)

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