



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

APPEAL AGAINST ORDER NO.63 OF 2023

Appellants
(Original Defendant
on R.A.)

- : 1.** Suresh Shridhar Bhatt, Died by L.Rs.
- (1-A)** Smt. Pushpa Suresh Bhatt,
Aged around 80 years, Occ. Housewife,
R/o Near Ramkrushna Ashram, Dhantoli,
Nagpur, Tq. & Dist. Nagpur.
- (1-B)** Harshavardhan Suresh Bhatt (Dead)
- (1-C)** Smt. Vishakha alias Gauri Prakesh Mahajan,
Aged 43 years, Occ. Housewife,
R/o Bakul Markand Building, Senapati Bapat
Marg, Dadar West, Mumbai.
- (1-D)** Chittaranjan Suresh Bhatt,
Aged 47 years, Occ. Business,
R/o 468/1, Sadashiv Peth, Pune-30.
- 2.** Dilip Shridhar Bhatt, Died by L.Rs.
- (2-a)** Raghunandan Dilip Bhat,
Aged : Adult, Occ. Business.
- (2-b)** Sushma Dilip Bhatt (Joshi),
Aged Adult, Occ. Business.
- (2-a) and (2-b) R/o Bhatt Wadi, Near Ekvira
Vidyut Colony, Saturna, Amravati.

– Versus –

Respondent **:**
(Original Plaintiff
on R.A.)

Dr. Yashwant Shankar Mashankar,
Aged Adult, Occ. Medical Practitioner,

R/o Near Railway Gate, Rajapeth, Amravati,
Tq. and Dist. Amravati.

Mr. Jaideep J. Chandurkar, Advocate for the Appellants.
Mr. Uday A. Gosavi, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.
DATE : 19th SEPTEMBER, 2025.

ORAL JUDGMENT :

01. Heard finally with the consent of the learned Advocates for the parties.

02. The plaintiff had filed a suit for specific performance of contract being S.C.S. No.150/2021. It is the case of the plaintiff that the suit property, which comprises of two plots bearing Nos. 66 and 67, each admeasuring 3000 sq.ft. in land bearing Survey No.19, Village Saturna, Pragane Badnera, Tahsil and District Amravati was agreed to be sold by mother of the defendants under an oral agreement entered into in the year 1973. It is the case of the plaintiff that he had close acquaintance with Late Dr. Shridhar Bhatt, father of the defendants. He has stated that after the demise of Dr. Shridhar, the relationship between the families continued. He states that the family of Dr. Bhatt was facing some financial hardship after his demise and in this backdrop, the mother of the defendants Late Shantabai agreed to sell aforesaid two plots (*hereinafter*

referred to as the suit property) to the plaintiff for a consideration of Rs.8,000/-. The plaintiff has stated that the entire sale consideration was paid to mother of the defendants during her lifetime. According to the plaintiff, although the agreement is an oral agreement, it is evidenced by a will executed by Late Santabai, the mother of the defendants, wherein she has stated about the agreement of suit property with the plaintiff and her responsibility to transfer the suit property in favour of the plaintiff. The plaintiff has further stated that the defendants had also confirmed the said agreement vide affidavit dated 16/10/1998. According to the plaintiff, the defendants have admitted that the entire sale consideration for the suit property was paid by the plaintiff to their mother Late Shantabai. The plaintiff has alleged that the defendants, despite having admitted the agreement and receipt of entire consideration, were not ready to transfer the suit property in his favour, as a consequence of which, he was constrained to file the suit for specific performance of contract.

03. The defendants filed their written statement in the matter and denied the agreement in question. The will executed by Late Shantabai is admitted in paragraph 10 of the Written Statement while replying to paragraph 7-A of the plaint. It is stated that although the will makes a reference to the suit property i.e. Plot Nos.66 and 67, it is stated that the will is silent on the point of consideration and the mode and manner of

payment thereof. The defendants denied the contention of the plaintiff that the consideration was already paid by him to their mother. The defendants disputed the affidavit dated 16/10/1998 stated to be executed by them admitting receipt of the entire sale consideration.

04. The learned trial Court framed issues in the matter based on the rival pleadings. Both the parties led their evidence on the said issues. The will executed by mother of the defendants is proved during the course of evidence and is marked as Exh.108. The affidavit of the defendants was marked as Article-A. The plaintiff had filed an application below Exh.165 for marking the said affidavit as exhibit. It is their contention that the affidavit was duly proved and was required to be exhibited. The said application remained pending, however, the suit came to be finally decided vide judgment and decree dated 14/06/2013. It will, however, be pertinent to mention here that issue No.3 framed by the learned trial Court is with respect to the proof of the affidavit dated 16/10/1998 and the learned trial Court has recorded a finding that the plaintiff had failed to prove the said affidavit.

05. The learned trial Court has recorded that the plaintiff had failed to prove that mother of the defendants had entered into an agreement of sale with respect to the suit property for a consideration of

Rs.8,000/- and further that the plaintiff failed to prove payment of Rs.8,000/- to the mother of the defendants towards the sale consideration. The suit is, accordingly, dismissed vide judgment and decree dated 14/06/2013. The plaintiff preferred an appeal challenging dismissal of the suit, being R.C.A. No.118/2013. The said appeal is decided vide judgment and decree dated 09/10/2023. The learned First Appellate Court has remanded the matter to the learned trial Court to decide the suit afresh after deciding the application at Exh.165 and by framing specific issue on the aspect of limitation and readiness and willingness. This judgment and order of remand are subject matter of challenge in the present appeal.

06. The following substantial question of law was framed in the appeal vide order dated 09/10/2024.

- i. Whether the First Appellate Court was right in remanding the matter on the ground of non-framing of issue regarding readiness and willingness of the plaintiff in performing his part of contract in the teeth of the fact that the trial Court though not framed specific issue but has specifically discussed about the readiness and willingness of the plaintiff to perform his part of agreement?*

07. The appeal was posted for final hearing with the consent of the parties.

08. Mr Jaideep Chandurkar, learned Advocate for the appellant, contends that both parties have led evidence with respect to all issues that arise for consideration and the learned trial Court has decided the suit on merits by considering the said evidence. The learned Advocate contends that the learned trial Court has dealt with each aspect of the matter including the issue of limitation and readiness and willingness. The learned Advocate contends that although the issue with respect to limitation is not framed, the learned trial Court has decided the said issue by recording cogent findings. As regards readiness and willingness, the contention of Mr Chandurkar is that according to the plaintiff, he had paid the entire sale consideration with respect to the suit property and the learned trial Court has recorded a clear finding on issue No.2 that plaintiff had failed to prove payment of consideration. Issue No.2, according to Mr Chandurkar, in effect deals with the aspect of readiness and willingness. Mr Chandrakar further contends that since the basic agreement itself is not proved, the issue of readiness and willingness is in a sense rendered redundant. As regards application at Exh.165, the learned Advocate contends that elaborate findings are recorded with respect to the affidavit at Article-A by the learned trial Court and, therefore, the order of remand could not have been passed on the ground that the said application remained undecided. The learned Advocate, therefore, contends that the

appeal should be allowed and the learned Appellate Court should be directed to decide the appeal on merits.

09. *Per contra*, Mr. Uday Gosavi, learned Advocate for the respondent-original plaintiff supports the judgment and order. The contention of Mr. Gosavi is that before a suit is decided on merits, all pending applications must be decided. He contends that failure on the part of the learned trial Court in deciding the application at Exh.165, has caused serious prejudice to the plaintiff. According to Mr. Gosavi, the affidavit at Article-A contains clear admission regarding receipt of entire sale consideration and, therefore, the application at Exh.165 in which prayer was made for marking the said document as exhibit, is a very crucial application, which will have very material bearing on the outcome of the suit. Mr. Gosavi also contends that the issues of limitation and readiness and willingness are also material issues, which were not framed by the learned trial Court. He points out that in view of above, a specific prayer was made in the appeal to remand the matter before the learned trial Court.

10. I have heard the rival submissions as aforesaid and perused the records of the learned trial Court and the learned Appellate Court including both the judgments. Perusal of judgment passed by the learned

trial Court will demonstrate that the learned trial Court has held that the plaintiff has failed to prove the alleged oral agreement. While arriving at such findings, the learned trial Court has considered evidence on record in great detail. The learned trial Court, while dealing with the aspect of existence of agreement, has also dealt with the contention of the plaintiff regarding payment of alleged sale consideration of Rs.8,000/- in the year 1973. The learned trial Court has recorded a finding that the claim of the payment having been made was based on Exh.25, which indicated that the payments were made between the year 1970 to 1973 as against the case of the plaintiff that the payment was made in the year 1973, when the agreement was allegedly arrived at. The learned trial Court has also elaborately dealt with the affidavit at Article-A and has recorded a finding that it was not safe to place reliance on the alleged affidavit. The learned trial Court has discarded the said document by recording elaborate findings.

11. It is in this context that the judgment of remand needs to be examined. The learned First Appellate Court has deemed it appropriate to remand the matter to the learned trial Court on the following three counts:

- i. Issue on the point of limitation is not framed.
- ii. Issue on the point of readiness and willingness is not framed.
- iii. Application at Exh.165 is not decided on merits.

12. It will be appropriate to first deal with the aspect pertaining to application at Exh.165. The said application, as stated above, was filed to mark the affidavit dated 16/10/1998 as exhibit. It is the case of the plaintiff that the defendants had admitted agreement and receipt of sale consideration in terms of the said affidavit. The said affidavit is marked as Article-A. Perusal of the judgment of the learned trial Court will demonstrate that while holding that the plaintiff has failed to prove the agreement, the learned trial Court has elaborately dealt with the said document at Article-A. The learned trial Court has disbelieved and discarded the said affidavit. Even if the affidavit was marked as exhibit, the veracity thereof could have been considered by the learned trial Court. The learned trial Court has indeed considered the veracity of the said document and found that the document is doubtful in nature. The learned trial Court has dealt with the evidence of the Advocate Mr. Hirurkar, through whose evidence, the said affidavit was sought to be proved and disbelieved the said evidence.

13. Thus, although the learned trial Court has not decided the application at Exh.165 on merits, even if the said application was allowed and the affidavit at Article-A was marked as exhibit, the said affidavit could have been discarded by the learned trial Court for the reasons recorded in the judgment. The correctness or otherwise of the reasons is of course

subject to decision by the appellate authority. However, so far as the learned trial Court is concerned, the said findings were sufficient to discard the documents, even if, it was exhibited. Therefore, no prejudice is caused to the plaintiff only because application to exhibit the document was not decided.

14. As regards limitation, although the learned trial Court has not framed issue on the point of limitation, the findings with respect to limitation are recorded by the learned trial Court. The perusal of the judgment by the learned First Appellate Court does not reveal that the learned First Appellate Court recorded satisfaction that any prejudice was caused to the plaintiff due to the fact that the finding was recorded on the point of limitation without framing specific issue in that regard. In that view of the matter, the failure on the part of the learned trial Court to frame point on limitation is not a reason good enough warranting remand of the matter to the learned trial Court.

15. As regards the issue with respect to readiness and willingness, it must be stated that the learned trial Court has recorded a finding that the plaintiff had failed to prove the agreement in question. In view of the such finding, the issue of readiness and willingness did not, in fact, arise for a detailed consideration. It is obvious that if the agreement is held to

be not proved, the issue of readiness and willingness will lose its significance. In any case, perusal of the plaint averments will demonstrate that it is the case of the plaintiff that he had paid the entire sale consideration to the defendants' mother in the year 1973 when the alleged agreement was entered into. The learned trial Court has framed issue with respect to the said contention of the plaintiff that entire sale consideration was paid. This issue is answered against the plaintiff, which implies that according to the learned trial Court, the plaintiff has not performed his part of the contract. The issue regarding readiness and willingness was in terms answered by the learned trial Court. It must be reiterated that the case of the plaintiff is that he had already paid the amount of sale consideration and was ready and willing to perform the remaining part, if any.

16. With respect to both the issues relating to limitation and readiness and willingness, the fact that the learned trial Court has dismissed the suit holding that the agreement is not proved assumes significance. The learned First Appellate Court has not disturbed the said finding and has remanded the matter to the learned trial Court for deciding the suit afresh.

17. In this regard, it will be appropriate to refer to Order 41 Rule 23 and 23-A of the Code of Civil Procedure, which provides that in cases

where a suit is decided on merits and remand is considered necessary, the Appellate Court may on reversal of decree in the appeal remand the matters to the learned trial Court for deciding the suit afresh. As stated above, the agreement itself is not proved according to the learned trial Court. This finding is not reversed by the learned First Appellate Court. Unless the finding is reversed, the issue of readiness and willingness and limitation will not be of much significance. Even if, it is held that the suit is filed within limitation, the suit cannot be decreed unless the agreement is proved. Likewise, the question of readiness and willingness will not arise if the agreement itself is not proved.

18. In view of the above, in the considered opinion of this Court, the learned First Appellate Court ought to have decided the appeal on merits. There is no good ground for remanding the suit to the learned trial Court for deciding the same afresh. The substantial question of law framed in the appeal deserves to be answered in favour of the appellants-original defendants and against the respondent-original plaintiff.

19. In the result, the appeal is allowed in the following terms:

- i. The judgment and order dated 09/10/2023 passed by the learned District Judge-3, Amravati in R.C.A. No.118/2013 is quashed and set aside.

- ii. The learned Appellate Court is directed to decide the appeal on merits.
- iii. The parties are directed to appear before the learned First Appellate Court on 15th October, 2025.
- iv. The parties to note that separate notice for appearance will not be issued.
- v. There shall be no order as to costs.

(Rohit W. Joshi, J.)

**sandesh*