



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

SECOND APPEAL NO.318 OF 2025

APPELLANT

(Ori. Defendant)
(On R.A.)

:- Shri Sushilkumar S/o Bholanath Gupta, aged 63 years, Occ. Business, R/o. Jagannath Ward, Hinganghat, Tah. Hinganghat, District Wardha.

..VERSUS..

RESPONDENT

(Ori. Plaintiff)
(On R.A.)

:- Shri Rohit S/o Radheshyam Shrivastava, aged 48 years, Occ. Business, R/o. Kaji Ward, Hinganghat, Tah. Hinganghat, District Wardha.

Mr. M.A. Vishnu, Advocate for Appellant.

Mr. M.M. Agnihotri, Adv. a/w Mr. P.L. Sagdeo, Adv. for Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 08/12/2025

ORAL JUDGMENT :

1. Suit for specific performance of contract came to be decreed against the present appellant. First appeal preferred by the appellant is also dismissed. The appellant/original defendant has filed the present second appeal assailing these concurrent decrees. The contention of the learned Advocate for the defendant is that he had come up with a specific contention that the agreement in question was never executed and that it was created by misusing the signatures of the defendant, which were obtained by the plaintiff on

blank papers towards security for a loan amount advanced by the plaintiff to the defendant.

2. It is further contended that since the execution of the agreement was denied, a cloud was created over the agreement and therefore, in order to prove the agreement, it was necessary for the plaintiff to examine the Notary before whom the agreement is stated to be executed. Apart from this, the learned Advocate also contends that since the suit property was mortgaged with a nationalized bank, the agreement of sale is not enforceable in view of Section 56 of the Contract Act, 1872.

3. As can be seen from the submissions made by the learned Advocate, the signature on the agreement is not in dispute. As regards the defence that the plaintiff had obtained signatures on blank stamp papers, the learned Courts have found that prior to filing of suit, the plaintiff had issued two notices to the defendant calling upon him to perform his part of the contract by executing the sale deed in terms of the agreement, in the reply notice sent by the defendant, the contention that the agreement is a fabricated document was not raised. The plaintiff has also examined attesting witness to prove due execution of the agreement. The findings with respect to due execution and proof of agreement are based on

appreciation of evidence. These findings recorded by the learned Courts cannot be said to be perverse by any stretch of imagination. It is apparent that, the defendant has failed to discharge his burden of proving case of fraud. As regards the contention that there was a cloud over the existence of the agreement, the said contention cannot be accepted. The agreement is duly proved by the plaintiff by leading cogent evidence. It will be pertinent to mention that out of the total consideration of Rs.78,40,000/-, the plaintiff has admittedly paid part consideration of Rs.10,51,000/-, out of which a sum of Rs.10,00,000/- is paid through online transfer mode.

4. As regards the contention with respect to Section 56 of the Contract Act, 1872, that the agreement is not enforceable since the suit property was mortgaged with Nationalized Bank, the said contention is liable to be rejected in view of the settled legal position that a mortgage follows the property and not the person.

5. No substantial question of law is arises for consideration. Second appeal is therefore **dismissed**. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate