



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

SECOND APPEAL NO.333 OF 2021

APPELLANT :- Sau. Chanda W/o Shankarrao Raut,
Aged about 49 years, Occupation –
Household, R/o Gond Plot, Wardha, Tahsil
and District Wardha.
(Original Defendant No.3)

..VERSUS..

RESPONDENTS :- 1) Liladhar s/o Pandurang Pohane, aged about
62 years, Occupation – Retired, R/o Khdse
Lay Out, Ward No.2, Bachelor Road,
Wardha, Tahsil and District Wardha.
(Original Plaintiff)

2) Smt. Vatsalabai wd/o Anandrao Kale, Aged
about 65 years, Occupation – Household,
resident of near Apeksha Home Society,
Gurukunj Mozri, Tahsil Tiosa, District
Amravati
(Original Defendant No.1 – Since Dead)

3) Gajanan s/o Anandrao Kale, Aged about
37 years, Occupation – Service, Resident of
near Apeksha Home Society, Gurukunj
Mozri, Tahsil Tiosa, District Amravati.
(Original Defendant No.2)

4) Sau. Manda W/o Vasantrao Dakulkar,
Aged about 47 years, Occupation –
Household, Resident of Kudhali, Tahsil
Samudrapur, District Wardha.
(Original Defendant No.4)

5) Sau. Nanda w/o Namdeorao Barahate,
Aged about 45 years, Occupation –
Household, Resident of Santaji Nagar,
Mehkar, Tahsil Mehkar, District Buldhana.
(Original Defendant No.5)

6) Smt. Vandana wd/o Vijayrao Mahalle,
Aged about 42 years, Occupation –
Household, Resident of Bhavishya Nirvah
Nidhi Bhavan, Near Tukdoji Statue,
Nagpur, Tahsil and District Nagpur.
(Original Defendant No.6)

Amendment carried
out as per order
dated 11.07.2019.

6) Vandana wd/o Vijayrao Mahalle,
Aged about: 42 years, R/o: Near Darubatti,
Ashirwad Nagar, Hudkeshwar Road,
Nagpur.

7) Sau. Sandhya w/o Gajanan Gadhawe,
Aged about 40 years, Occupation –
Household, Resident of Bhavishya Nirvah
Nidhi Bhavan, Near Tukdoji Statue,
Nagpur, Tahsil and District Nagpur.
(Original Defendant No.7)

Amendment carried
out as per order
dated 11.07.2019.

7) Sandhya w/o Gajanan Gadhawe
Aged about: 40 years, R/o: Bidgaon Tyre
Company, Malgaon- Kapsi Road, Pardi
Chowk, Saneshwar Nagar, Nagpur.

Mr. S.V. Bhutada, Adv. a/w Mr. Y. Maheshwari, Adv. for Appellant.
Mr. S.U. Nemade, Adv. a/w A.S. Nemade, Adv. for Respondent No.1.
Mr. G.G. Mishra, Advocate for Respondent Nos.3 to 7.

CORAM : ROHIT W. JOSHI, J.

DATE : 25/11/2025

ORAL JUDGMENT :

1. Heard.

2. The present second appeal is preferred by the original defendant No.3, challenging the concurrent decrees for specific performance of contract passed against the defendants.

3. The brief facts of the case are that, the husband of defendant No.1 and the father of the other defendants have entered into an agreement of sale with respect to the suit property with the plaintiff on 22.11.2010 for a consideration of Rs.7,50,000/-, out of which a sum of Rs.1,00,000/- was paid by the plaintiff to the deceased vendor towards earnest money on the date of agreement i.e. on 22.11.2010. As per the agreement, the sale deed was to be executed on or before 30.03.2011. However, the vendor expired on 11.12.2010, before the stipulated date. After demise of the vendor, his son (defendant No.2/Gajanan) entered into agreement dated 23.12.2010 with the plaintiff, confirming the earlier agreement dated 22.11.2010. In this document, the defendant No.2/Gajanan also assured the plaintiff that he will obtain the consent of all other legal heirs of the deceased vendor and complete the transaction as per the original agreement. However, since the sale deed could not be executed, the plaintiff filed a suit for specific performance of

contract being Special Civil Suit No.95 of 2011. The widow, son and five daughters of the deceased vendor (Anandrao), except the defendant No.3 (the present appellant) admitted the agreement of sale dated 22.11.2010 and agreed to execute the sale deed with respect to the suit property in favour of the plaintiff. The said stand is taken by them in their written statement. However, the present appellant (defendant No.3) contested the suit by disputing the agreement of sale itself.

4. The learned trial Court has decreed the suit, *inter alia* directing the defendants to execute the sale deed with respect to the suit property in favour of the plaintiff vide judgment and decree dated 17.04.2013. The present appellant/defendant No.3 preferred an appeal challenging the said decree for specific performance of contract which came to be dismissed by the learned First Appellate Court. These concurrent decrees for specific performance of contract are subject matter of challenge in the present appeal.

5. Mr. Maheshwari, learned Advocate for the appellant contends that the agreement of sale dated 22.11.2010 was not proved and as such, decree for specific performance of contract based on the said agreement could not be passed by the learned Courts. The learned Advocate draws attention to the examination-

in-chief of the plaintiff and contends that only the execution of the document was proved by the plaintiff, and the contents of the document, more importantly its correctness, were not proved

6. Mr. Maheshwari, learned Advocate places reliance on the judgments of this Court in the matters of *Madholal Sindhu ..vs.. Asian Assurance Co. Ltd*, reported in **AIR 1954 Bombay 305**, *Prakash Cotton Mills Pvt. Ltd. ..vs.. Municipal Commissioner for greater Bombay*, reported in **AIR 1982 Bombay 387**, *Om Prakash Berlia and another ..vs.. Union Trust of India and others*, reported in **AIR 1983 Bombay 1** and *Bank of India ..vs.. M/s. Allibhoy Mohammed and Ors*, reported in **AIR 2008 Bombay 81**, in support of his contention. All these judgments reiterate the settled legal position that proof of execution of document does not dispense with proof of contents of the document and that the contents are also required to be proved in order to read the document in evidence.

7. In the present case, the plaintiff has filed his affidavit in lieu of examination in chief and has entered the witness box. Paragraph-2 of the affidavit clearly spells out the agreed terms and conditions of the sale. The plaintiff has deposed about the suit property which forms subject matter of the agreement of sale, the date of agreement, the agreed sale consideration, payment of earnest

amount and the date stipulated for the execution of the sale deed. Thus, the deposition of plaintiff speaks about the contents of the agreement. The evidence also speaks about signatures and execution of the agreement. The execution of agreement and its contents are properly proved. In the considered opinion of this Court, the said evidence is sufficient to prove the contents of the document.

8. It must also be stated that during the course of evidence, when the document was marked as an exhibit, the only objection raised was with respect to the registration of the document. Apart from this, no other objection was raised while the document was marked. In view of the above, the substantial question of law i.e. sought to be portrayed by the learned Advocate for the appellant does not arise for consideration in the second appeal. Second appeal is stand **dismissed** with no order as to costs.

9. At this stage, request is made on behalf of the appellant to grant stay to the execution of the decree for a period of eight weeks in order to enable the appellant to approach the Hon'ble Supreme Court of India. It is contended that the suit property is a residential house. The learned Advocate for the respondent disputes the contention that the suit property is a residential house of the appellant. He also opposed the request on the ground that now the

concurrent decrees passed by the learned Courts have been confirmed by this Court and therefore, there is no question of continuing the interim relief.

10. In the considered opinion of this Court, it will be appropriate to continue the interim relief upto **11.01.2026** with modification that the execution proceedings may continue, however possession of the suit property will not be delivered to the respondent No.1/plaintiff till **11.01.2026**.

(ROHIT W. JOSHI, J.)

C.L. Dhakate