



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR
SECOND APPEAL NO. 57 OF 2025
WITH
CIVIL APPLICATION (CAS) NO. 172 OF 2025

Vijay @ Hemant Wamanrao Matte
Aged : 54 Years, Occu : Service, R/o Near
L. T. College, Wani, District Yavatmal.

... APPELLANT

VERSUS

1. Ramesh s/o Ramaji Parodhi
Aged about 64 Years, Occu : Retired; R/o
Prakash Nagar, Khaperkheda, Tahsil and
District Nagpur.
2. Prabhakar s/o Ramaji Parodhi
Aged 71 Years, Occu : Retired, R/o P & T
Colony, Sahar, Mumbai - 99.

... RESPONDENTS

Mr. S. M. Pande, Advocate for Appellant.
Mr. A. V. Bhide, Advocate for Respondents.

CORAM : ROHIT W. JOSHI, J.
DATE : MAY 07, 2025.

ORAL JUDGMENT

. Heard Mr. S. M. Pande, learned Counsel for the Appellant and
Mr. A. V. Bhide, learned Counsel for the Respondents.

2. The Appellant is original Plaintiff. The Respondents are original
Defendants. The Plaintiff and Defendants have entered into an Agreement of
Sale dated 7/8/2006 with respect to agricultural land owned by the

Defendants bearing Gat Nos. 183/1 and 183/2 total admeasuring 4.87 HR (12 acres) situated at village Rajur, Tahsil Wani, District Yavatmal for consideration of Rs.1,90,000/- per acre i.e. Rs.4,75,000/- per hectare approximately. However, for some reason the said Agreement could not fructify in execution of sale deed and thereafter it was decided that instead of entire 4.87 HR (12 acres) land, only half portion of land from the said two Gat Numbers will be sold. For this, a subsequent Agreement came to be executed between the parties on 13/2/2007. In the said Agreement, total sale consideration is reflected as Rs.1,90,000/- for approximately 2.43 HR land as against Rs.1,90,000/-, which was the agreed sale consideration for one acre of land under the earlier Agreement.

3. Realizing this mistake in drafting of the subsequent Agreement, the Defendants issued a notice to the Plaintiff calling upon the Plaintiff to come forward for effecting necessary correction in the subsequent Agreement. This notice was sent by the Defendants to the Plaintiff through their Advocate on 17/2/2007. However, the plaintiff contended that under the subsequent agreement, sale consideration for entire 6 acres land was Rs.1,90,000/- and denied the contention of the defendants that agreed sale consideration was Rs.1,90,000/- per acre as was decided earlier. In view of the said dispute, the

Plaintiff filed a suit for specific performance of contract being Regular Civil Suit No. 34/2012 (Old Special Civil Suit No. 27/2007).

4. The learned trial court has decreed the suit by granting a decree for specific performance of contract in favour of the Plaintiff. The learned trial court has placed reliance on Sections 91 and 92 of the Indian Evidence Act, 1872 to hold that any oral evidence will not be admissible to alter or modify the terms of a written Agreement.

5. Aggrieved by the said decree for specific performance of contract, the Respondents/original Defendants filed an appeal being Regular Civil Appeal No. 46/2019. The learned First Appellate Court has partly allowed the appeal vide Judgment and Decree dated 5/9/2022. The learned First Appellate Court has refused to grant the decree for specific performance of contract and has instead granted relief to refund the earnest amount of Rs.51,000/- to the Plaintiff along with interest at the rate of 9% per annum from the date of institution of suit till realization of the said amount.

6. The original Plaintiff has filed the present Second Appeal challenging the said decree passed by the First Appellate Court.

7. Mr. S. M. Pande, learned Counsel for the Appellant/Plaintiff contends that the learned trial court was completely justified in excluding oral evidence with respect to a written Agreement and had rightly held that the agreed sale consideration was Rs.1,90,000/- for the entire 2.43 HR (6 acres) land and not Rs.1,90,000/- per acre. He also places reliance on Section 26 of the Specific Relief Act, 1963 and contends that if the Agreement did not express the real intention of the parties, either on account of fraud or on account of mutual mistake, it was necessary for the Defendants to seek rectification of the Agreement in view of Section 26 of the Specific Relief Act.

8. In my considered opinion, having regard to the nature of a decree for specific performance of contract, it may not be necessary to go into the said issue. It is well settled that decree for granting specific performance of contract is a matter of discretion of the court. Decree for specific performance cannot be claimed as a matter of right. The discretion has to be exercised judiciously. In a given case, even if Plaintiff establishes all the elements for obtaining a decree for specific performance of contract, yet the court may refuse to grant such decree, if it is otherwise unjust or inequitable.

9. In the present case, it is undisputed that earlier on 7/8/2006 the parties had entered into an Agreement for Sale of entire property for a

consideration of Rs.1,90,000/- per acre. However, under the subsequent Agreement when the area of the land that was to be sold, was reduced, the entire sale consideration is mentioned as Rs.1,90,000/-, as against the sale consideration of Rs.1,90,000/- per acre. According to the Plaintiff, under the second agreement, the same land to the extent of 6 acres approximately was agreed to be sold at a consideration of Rs.1,90,000/- as against consideration of Rs.11,40,000/- (Rs.1,90,000/- x 6 acres). In other words, according to the Plaintiff, under the second Agreement, the agreed sale consideration was reduced by six times. This sounds illogical and irrational. It is beyond comprehension that within a period of six months from the date of execution of prior Agreement, the Defendants had agreed to sell half portion of the same property to the Plaintiff for consideration, which is reduced by six times of the agreed sale consideration.

10. It is obvious that there is typographical error in the subsequent Agreement, which initially was not noticed by the Defendant. The Defendant, upon noticing such mistake in the subsequent Agreement, issued a legal notice calling upon the Plaintiff to correct the error. The Plaintiff, however, wanting to take undue advantage of the situation, insisted that agreed sale consideration was Rs.1,90,000/-.

11. Assuming the contention raised by the learned Counsel for Appellant to be correct, still in my considered opinion, the contention canvassed will not give rise to a substantial question of law. At best, the contention gives rise to a technical question of law.

12. It is now well settled that substantial question of law is a question, which if answered in favour of the Appellant, it will have effect of overturning the decree in favour of the Appellant as has been held in the matter of Ramratan Pandurang Sunwani Vrs. Maya Ramratan Sunwani, reported in 2010 (4) Mh.L.J. 154 if a question of law does not affect final outcome of the suit, it is not a substantial question of law. In the facts of the present case, even if it is held that subsequent Agreement is required to be rectified or oral agreement with respect to real intention of parties is inadmissible, in my considered opinion, it will be inequitable to grant a decree for specific performance of contract in favour of the Plaintiff/Appellant. It needs to be mentioned that contention is also raised by the Defendant in the written statement that granting a decree for specific performance of contract for a consideration of Rs.1,90,000/- for the entire 6 acres land as against agreed consideration of Rs.1,90,000/- per acre, will be unjust and inequitable. It will be pertinent to state that although inadequacy of sale consideration may not itself a ground for refusing specific performance, in the present case, the

actual consideration agreed between the parties is not reflected in the document due to oversight as a consequence of which the defendants – vendors will be forced to sell their property at a grossly inadequate consideration which will be unfair, unjust and inequitable and as such, granting decree for specific performance will be impermissible in view of Section 20 of the Specific Relief Act.

13. Both the learned Courts have correctly appreciated the controversy involved in the matter and have rightly refused to grant decree for specific performance of contract. The decrees do not warrant any interference.

14. In that view of the matter, in my considered opinion, no substantial question of law arises for consideration in the present Second Appeal. Second Appeal is dismissed with no order as to costs.

15. The learned Counsel for Appellant states that in compliance of the decree passed by the learned First Appellate Court, the Respondents have deposited decretal amount with the First Appellate Court, but in the event the said amount is deposited, the Appellant shall be at liberty to withdraw the said amount deposited with the learned First Appellate Court.

16. Since the Second Appeal is dismissed, pending Civil Application No. 172/2025 does not survive. The same stands disposed of accordingly.

(ROHIT W. JOSHI, J.)

vijaya