



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 411 OF 2025

GURUNATH BABRUBAN PADULKAR

Versus

SUSHILABAI ANGAD PANDHARE

* Advocate for the Appellant : Mr. P.D. Sangvikar

CORAM : MEHROZ K. PATHAN, J.

DATE : 17th JANUARY 2026

ORDER :

1. The Second Appeal is filed by the Appellant challenging the judgment dated 07.09.2017 passed by the District Judge-1, Osmanabad in Regular Civil Appeal No.17/2011, whereby the Appellate Court dismissed the appeal against the judgment and decree dated 14.12.2004 passed by the 3rd Joint Civil Judge, Osmanabad in RCS No.156/2004.

2. Plaintiff had filed R.C.S. No.156/2004 before the Civil Judge, Junior Division, Osmanabad seeking relief for Specific Performance of Contract and in alternative recovery of Rs.50,000/-.

3. It was contended by the Plaintiff before the trial Court that defendant is her relative. In the month of June-2001, defendant was in need of Rs.50,000/- for his house expenditure. Therefore, defendant approached to her and demanded amount of Rs.50,000/-. The defendant kept a proposal to sale his land to her.

On 13.06.2001 defendant executed agreement to sale in her favour in respect of land Gat No.111 admeasuring 0-H 66-R land situated at village Lasona, Tq. and Dist. Osmanabad (hereinafter referred to as 'suit property' for the sake of brevity) which is bounded as under:

Towards East : Land of Ashok Pawar.

Towards West : Land of Angad Padalkar

Towards South : Land of Narayan Nagu Padalkar

Towards North : Land of Babruwan Gena Padalkar

4. It was further contended by the Plaintiff that Defendant agreed to sale the suit property for consideration of Rs.70,000/-. On 13.06.2001, she paid Rs.50,000/- to the defendant as an earnest money before the panch. Defendant accepted the amount and executed agreement to sale on stamp of Rs.100/- in her favour. She assured to give remaining amount of Rs.20,000/- at the time of execution of sale deed and defendant promised to execute the sale deed after receiving of remaining amount.

5. It was further contended by the Plaintiff that in the year 2002, on the day of Gudipadwa she approached to the defendant and asked to execute sale deed as per agreement. The defendant showed his personal difficulty and he avoided to execute sale deed and promised to execute the sale deed in the year 2003. Defendant failed to execute the sale in the year 2003. After festival of Gudipadwa 2003, she again approached to the defendant and asked defendant to execute sale deed but the defendant avoided to execute sale deed on one and other pretext.

6. The Plaintiff therefore issued a notice to the Defendant through her advocate on 06.02.2004. The Defendant accepted the notice but failed to reply, thereby denying the execution of the sale deed. Consequently, the Plaintiff filed the present civil suit for specific performance. The Defendant entered appearance and denied that he had approached the Plaintiff, demanded Rs.50,000/-, or agreed to sell his land to the Plaintiff. He further denied the execution of the agreement dated 13.06.2001 for consideration of Rs.70,000/-, as well as the receipt of Rs.50,000/- as earnest money and the execution of any sale agreement.

7. The learned trial Court framed issues and answered them, thereby decreeing the suit with costs and directing the Plaintiff to deposit the remaining amount of Rs.20,000/-. A further direction was issued to the Defendant to execute the sale deed of the suit land in favour of the Plaintiff. The relevant issues framed and answered by the trial Court are as under :

Sr. No.	Issues	Findings
1	Does Plaintiff prove that Defendant had agreed to sell the suit property to Plaintiff and executed agreement to sell dated 13.06.2001?	In affirmative
2	Does Plaintiff prove that he paid Rs.50,000/- as earnest money to Defendant on 13.06.2001?	In affirmative
3	Does Plaintiff prove that he is ready and willing to perform his part of contract?	In affirmative
4	Does Defendant prove that Plaintiff is doing money lending business without license?	In negative
5	Does Defendant prove that he had availed loan of Rs.20,000/- from Plaintiff for purchase of land or interest?	In negative

8. The Appellant, being the sole Defendant, has therefore filed an appeal challenging the judgment and decree dated 14.12.2010

before the learned District Judge, Osmanabad, registered as Regular Civil Appeal No.17/2011.

9. The Appellate Court, after considering the evidence led by both the Plaintiff and the Defendant, framed the following issues :

Sr. No.	Issues	Findings
1	Does Plaintiff prove that Defendant had agreed to sale the suit property as per agreement to sale dated 13.06.2001?	Affirmative
2	Does Plaintiff prove that she paid Rs.50,000/- as earnest money to the Defendant on 13.06.2001?	Affirmative
3	Does Plaintiff prove that she was and is ready and willing to perform her part?	Affirmative
4	Does Defendant prove that he had obtained loan of Rs.20,000/- from the Plaintiff and he has fully satisfied said amount?	Negative
5	Does Defendant prove that Plaintiff had forged and fabricated blank stamp paper of Rs.100/- and used it for agreement to sale dated 13.06.2001?	Negative

. Thus, after considering the evidence led by the Plaintiff as well as the Defendant, the appeal came to be dismissed with costs.

10. The learned Counsel for the Appellant submits that the substantial questions of law involved in the present appeal are as under :

- (A) What decree of proof is required to prove agreement to sale is executed ?
- (B) Whether mere admission of signature on document amounts to admission of contents of document in?
- (C) Whether discretionary relief of specific performance can be granted in case where genuiness of agreement to sale itself is in the shadow of doubt?

11. I have heard the learned Counsel for the Appellant and have also perused the judgment dated 14.12.2010 passed by the 3rd JMFC, Osmanabad in RCS No.156/2004, as well as the judgment dated 07.09.2017 passed by the District Judge-1, Osmanabad in RCA No.17/2011. The Plaintiff has relied upon the agreement to sell dated 13.06.2001 executed on a stamp paper of Rs.100 in favour of the Plaintiff, whereby the Plaintiff paid an amount of Rs.50,000/- to the Appellant, with an assurance that the Appellant shall pay the remaining balance of Rs.20,000/- at the time of execution of the sale deed, and upon receipt of the said balance, the Defendant shall execute the sale deed. In order to prove the said agreement to sell dated 13.06.2001, the Plaintiff examined herself and one witness, Ashok (Exhibit-45), who deposed that the Defendant was in need of Rs.50,000/- for family expenditure and therefore approached the Plaintiff and agreed to sell land bearing Gut No.111 for a total consideration of Rs.70,000/-, out of which Rs.50,000/- was paid by the Plaintiff as earnest money to the Defendant.

. The cross-examination of PW-2/Ashok Pawar, did not yield any favourable admissions. On the contrary, the testimony of the Defendant corroborated the version of PW-1, and accordingly the learned trial Court answered Issue No.1 in favour of the Plaintiff. Thereafter, the Plaintiff examined PW-3 at Exhibit-66, who was the stamp writer, to prove the conditions of the agreement to sell dated 13.06.2001. PW-3 deposed that the agreement was written by him and was read over to both the Plaintiff and the Defendant. Thereafter, the Plaintiff and Defendant affixed their signatures on the said stamp paper in the presence of Raghu Kumbhar and

Angad Pandhare, who acted as attesting witnesses. Upon scrutiny of the evidence of PW-1, PW-2, and PW-3, the learned trial Court held that the agreement to sell dated 13.06.2001 was duly proved, under which the Plaintiff had paid an amount of Rs.50,000/- to the Defendant.

12. On the contrary, the Defendant examined himself at Exhibit-53 but failed to examine either of the witnesses, Raghu or Angad Pandhare, in support of his defense. The Defendant therefore failed to prove that the amount of Rs.20,000/- was taken in the presence of Raghu, as alleged in his written statement. It was obligatory on the part of the Defendant to examine the witness in whose presence the said amount was allegedly paid. The learned trial Court accordingly answered Issue No.4 in the negative and held that the execution of the agreement to sell dated 13.06.2001 was not a money-lending transaction. Consequently, the Court directed the Plaintiff to pay the remaining balance amount of Rs.20,000/- and further directed the Defendant to execute the sale deed in respect of land bearing Gut No.111 situated at Lasona, Taluka Osmanabad, within four months from the date of judgment.

13. The Appellate Court considered in detail the pleas raised by both the Plaintiff and the Defendant. It noted that the Plaintiff had examined PW-1, PW-2, and PW-3 in support of his claim to prove the agreement dated 13.06.2001, and found that the Plaintiff had paid an amount of Rs.50,000/- as earnest money, with the remaining amount to be paid at the time of execution of the sale deed. The Appellate Court therefore answered Issue No.1 in the

affirmative and Issue No.4 in the negative, holding that the Defendant had failed to examine the witness Raghu, in whose alleged presence the Defendant claimed to have handed over Rs.20,000/-. Accordingly, the Appellate Court rightly dismissed the appeal.

14. In view of the concurrent findings of fact by both the Courts below, none of the substantial question of law raised by the Appellant, as referred to hereinabove, call for any interference by this Court under Section 100 of the Code of Civil Procedure.

15. The learned Counsel for the Appellant has relied upon the judgment of the Hon'ble Supreme Court reported in (2023) 11 SCC 775 in the case of **U.N. Krishnamurthy (Since Deceased) Through Legal Representatives Vs. A.M. Krishnamurthy**, in support of his submissions. A perusal of the said judgment shows that its ratio is that the Plaintiff must demonstrate continuous readiness and willingness to pay the consideration amount under the agreement to sell, which the Plaintiff is required to prove regardless of any default by the original Defendant. The finding of the trial Court on Issue No.3 clearly shows that the Plaintiff was able to establish her readiness and willingness to perform her part of the contract. The learned trial Court observed that the agreement to sell was executed on 13.06.2001 and that Rs.50,000/- was paid. It further observed that the notice issued to the Defendant on 06.02.2004 also demonstrated the Plaintiff's readiness and willingness to perform

the remaining part of the contract. Since Rs.50,000/- had already been paid, the Plaintiff proved her readiness and willingness to perform her part of the contract. The learned Appellate Court, in its judgment dated 07.09.2017, had also answered Issue No.3 in favour of the Plaintiff and observed that, as per Section 16 of the Specific Relief Act, the Plaintiff had proved that she was ready and willing to perform her part of the contract. The Plaintiff had already paid Rs.50,000/- and had the ability to pay the balance of Rs.20,000/- for execution of the sale deed, as could be seen from the notice dated 06.02.2004. Thus, there is a concurrent finding of fact regarding the Plaintiff's readiness and willingness to perform her part of the contract.

. The aforesaid observations of the learned trial Court as well as the first Appellate Court, satisfies the requirement of the law laid down by the Hon'ble Supreme Court in favour of the Plaintiff. No other substantial question of law arises in the present appeal for consideration by this Court. The appeal is devoid of substance and merit and is accordingly dismissed with costs.

[MEHROZ K. PATHAN]
JUDGE

Najeeb..