



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**1037 WRIT PETITION NO. 11886 OF 2023
AND
CIVIL APPLICATION NO. 686 OF 2026 IN WP/11886/2023**

MOHAMMAD ASHFAQ MOHAMMAD SIDDIQU MOTIWALA AND ANOTHER
VERSUS
PRAFULLA BHASKAR KULKARNI AND OTHERS

...
Advocate for petitioner - applicant : Mr. P.V. Barde
Advocate for respondent no. 5 : Mr. N.T. Tribhuwan
Respondents 1 to 3 – served – absent
Respondent no. 4 - deleted
...

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 17 JANUARY 2026

PER COURT :

Civil Application No. 686 of 2026, not on Board. Upon mentioning, taken on Board.

2. Considering the averments in the application, the application is allowed.
3. Necessary amendment to be carried out forthwith.
4. Heard learned counsel for the respective parties.
5. By way of present petition, the petitioner assails the order dated 19.08.2023 passed below Exhibit – 29 by the District Judge, Aurangabad in application RCA No. 53 of 2017, whereby the application filed by the petitioner for amendment came to be allowed.
6. Learned counsel for the petitioner Mr. Barde submits that at the appellate stage, application for amendment ought not have been entertained as there was no due diligence on the part of the original plaintiff – respondent

as original plaintiff had opportunity to amend the plaint earlier but the plaintiff waited till the trial Court decided the matter and, therefore, such application is filed to fill up the lacuna at the appellate stage. Therefore, he submits that such application cannot be considered at the appellate. He invited my attention to paragraph no. 17 of the judgment of the trial court, which reads as under :-

“17) Now I would like to consider legal position and for that it would be proper to consider observations made and ratio laid down in reported ruling 2009(4) Mh.L.J. 706 (Supra). For ready reference I would like to reproduce para No.8 of the Judgment, it reads as under -

8. Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs.100/- or more and that is by a registered instrument. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing price is not a condition precedent for completion of the sale by passing of title, as section 54 of Transfer of Property Act, 1882 ('Act' for short) define 'sale' as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under section 55(4)(b) of the Act. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed.

When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by section 92 of the Evidence Act.”

7. Per contra, Mr. Tribhuwan, learned counsel for respondent no. 5 supports the order.

8. The original plaintiff – respondent filed suit against the petitioner for declaration that the sale deed executed by late Bhaskar Kulkarni bearing no. 3671 of 2001 dated 27.12.2005 in favour of petitioner no. 1 is void and not binding upon the respondents. The original plaintiff – respondent had sought relief of declaration that his father Bhaskar Kulkarni had no right, authority and competence to sell the said suit land. Consequently, the said sale deed was not binding upon the original plaintiff – respondent to the extent of their 4/5th share.

9. Learned trial Court has recorded findings in paragraphs no. 20, 21, which read as under :-

“20. On considering requirement of Section 54 of the Transfer of Property Act, 1882, it is very clear, consideration amount can be paid or promised or part paid and part promised. In present case, admittedly, Bhaskar accepted part payment and intention of parties was clear to transfer ownership in exchange of consideration amount. Therefore, only because, entire consideration amount was not paid, it is not acceptable sale deed executed by Bhaskar in favour of defendant No.1 is void or liable to be cancelled.

21. After having gone through terms and conditions of sale deed (Exh.164), it is not possible to accept there was no any liability of Bhaskar to clear any objection, if taken in future pertaining to ownership and possession of the suit property, making it clear after execution of sale deed terms embodied in agreement to sale can not be relied upon to ascertain liability of the parties, sale deed being final document. Further it is also clear, as per terms and conditions of the sale and purchase transaction, cheque payment was not subject to the clearance of the objection if any taken to the mutation, ownership or possession of defendant No. 1. Therefore, act of stopping cheque payment for whatsoever reason, is not justifiable, same time it can not be accepted as a ground for declaring sale deed void or cancelled.”

10. Considering that allowing such amendment would not cause any prejudice to the petitioner - original defendant, I do not find any reason to

interfere with the dated 19.08.2023 passed below Exhibit – 29 by the District Judge, Aurangabad in application RCA No. 53 of 2017.

11. Hence, the petition is dismissed. No order as to costs.

[SIDDHESHWAR S. THOMBRE]
JUDGE

arp/