



Swapnil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 628 OF 2025**

Fakir Babu Dhodi. ... Appellant
Vs.
Dhiru Mangal Dhodi. ... Respondents

**WITH
INTERIM APPLICATION (STAMP) NO. 10340 OF 2026
WITH
SECOND APPEAL NO. 640 OF 2025
WITH
INTERIM APPLICATION (STAMP) NO. 10341 OF 2026**

Ms. Shrishailya S. Deshmukh for the appellant.

CORAM : GAURI GODSE, J.

DATE : 10th JUNE 2026

ORDER :

1. Second Appeal No. 628 of 2025 is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing his suit for specific performance. The appellant filed the suit for specific performance on 29th July 2015 to enforce an agreement dated 17th January 1989. The respondent is the owner of the suit land. The respondent had filed a suit for possession. Second Appeal No. 640 of 2025

arises out of the concurrent judgments and decrees for possession in the suit filed by the respondent. Common evidence was recorded in both suits. Since the facts in both the appeals are in respect of the same property and between the same parties, both the second appeals are decided by this common order.

2. The appellant claims to be in possession of the suit land based on an agreement dated 17th January 1989. He contends that he was already in possession of the suit land and, by the said agreement, the respondent had agreed to transfer the land in his favour for a total consideration of Rs. 20,000/- which was entirely paid to the respondent. The cause of action to file the suit for specific performance is pleaded on the ground of a notice issued by the respondent objecting to the construction carried out by the appellant and calling upon the appellant to remove the illegal construction and hand over the possession of the land. According to the respondent, the appellant was in permissive cultivation of the land.

3. Both courts have disbelieved that the suit agreement is a concluded contract between the parties. Hence, the prayer

for specific performance is refused. Both courts have dismissed the appellant's suit on the ground that a concluded contract is not proved and the suit for specific performance is not within the period of limitation. So far as the respondent's suit for possession is concerned, both courts have held that the respondent is the owner of the suit land and the appellant was in permissive use of the land only for cultivation. The prayer for specific performance was refused, and the appellant is directed to hand over the possession after removing the construction carried out on the land.

4. Learned counsel for the appellant submits that the attesting witnesses to the suit agreement were examined by the appellant. Thus, the terms and conditions of the contract are proved. It was a concluded contract between the parties, as the entire consideration had been paid and the appellant was already in possession of the suit land. It was only after the respondent called upon the appellant to hand over the possession of the suit land that the cause of action arose to file the suit, as it was a refusal on the part of the respondent to specifically perform the contract. Since the appellant was already in possession, the respondent was only required to

execute the sale deed and transfer the land in favour of the appellant. He, therefore, submits that the second appeal would raise a substantial question of law on the perverse findings recorded by both the courts in refusing specific performance despite the concluded contract proved by the appellant.

5. So far as the second appeal arising out of the decree for possession is concerned, he submits that the decree was passed only on the ground of refusal of specific performance in favour of the appellant. Hence, if the appellant succeeds in the suit for specific performance, he would be entitled to confirm his possession as the owner. Hence, even this second appeal would raise a substantial question of law on the ground of whether, in view of the concluded contract in favour of the appellant, the respondent would be entitled to seek possession of the suit land.

6. I have perused the papers of both the second appeals. The copy of the agreement is annexed to the second appeal. The agreement states that the appellant has been cultivating the land since 17th January 1980 and that the respondent, of his free will and consent, handed over the land for sale to the

appellant. The respondent has disputed this agreement, contending that he had never agreed to sell the suit land to the appellant and that he was only in permissive cultivation of the land. The respondent's contention is accepted by both courts, which hold that the respondent called upon the appellant to hand over possession because he had started illegal construction on the suit land. The oral evidence of the attesting witnesses was appreciated by both courts and disbelieved the execution of a concluded contract.

7. A perusal of the plaint does not indicate any specific terms of the contract regarding the execution of the sale deed, thereby making the suit agreement a concluded contract. Hence, both courts have disbelieved that the agreement is a concluded contract to sell the suit land. So far as the point of limitation is concerned, both the courts have held that in view of Article 54 of the Schedule of Limitation Act, the plaintiff has failed to prove that the suit for specific performance of the agreement dated 17th January 1989 was filed within three years as contemplated under Article 54. The notice issued by the respondent, objecting to the construction undertaken by the appellant and calling upon him to vacate

the land, is not considered a refusal to perform the contract.

8. In the absence of any particulars of the contract and a valid cause of action pleaded and proved, the prayer for specific performance is rightly rejected by holding that there is no concluded contract and the suit is not within the period of limitation under Article 54. I see no reason to interfere with the findings recorded by both courts, refusing specific performance on the ground of no concluded contract and the suit barred by limitation. There is no illegality or perversity in the reasons recorded by both the courts. Arguments raised in the second appeal arising out of the suit for specific performance would amount to reappreciation of the evidence on record, which is not permissible under Section 100 of the Civil Procedure Code, 1908 ("CPC"). Hence, no interference in the dismissal of the suit for specific performance is warranted in the second appeal, as it raises no question of law.

9. As far as the concurrent judgments and decrees for possession are concerned, the respondent is admittedly the owner of the suit land. The appellant has contended that he was already in possession before the execution of the

agreement. There is no valid source of possession pleaded and proved by the appellant for retaining possession. Hence, even in the second appeal arising out of the concurrent judgments and decrees for possession, no question of law arises.

10. Both second appeals are therefore dismissed. Pending applications are disposed of as infructuous.

[GAURI GODSE, J.]