



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.227 OF 2026
WITH
INTERIM APPLICATION NO.3330 OF 2026**

Rajaram Nivrutti Wadekar and Ors.	...	Appellants
versus		
Sheshamal Ratanji Solanki (deceased)		
through legal representatives Vikram		
Sheshamal Solanki and Ors.	...	Respondents

Mr. Balasaheb Deshmukh, for Appellants.

CORAM: N.J.JAMADAR, J.

DATE : 6 MAY 2026

ORDER :

1. Heard the learned Counsel for the Appellants.
2. This Second Appeal is directed against a judgment and decree dated 21 November 2025 passed by the learned District Judge – 1, Vadgaon Maval, Pune in Regular Civil Appeal No.9 of 2022, whereby the said appeal preferred by the Appellants – Plaintiffs, came to be partly allowed to the extent of the refund of the amount of Rs.3,60,000/- paid by the Plaintiffs to the deceased Defendant along with interest @ 12% p.a. from the date of institution of the suit till payment or realization, whilst dismissing the suit for specific performance of the contract for sale of the 3 Acres land out of Gat No.229 admeasuring 5 H 91.03 R situated at Mauje Kusgaon, Tal. Maval, Dist. Pune (the suit land).

3. Mr. Deshmukh, learned Counsel for the Appellants, submitted that the learned District Judge as well as the learned Civil Judge have committed a grave error in law in holding that the Plaintiffs were not ready and willing to perform their part of the contract and there was a default on the part of the Plaintiffs in the performance of their part of the contract, and, on account of uncertainty as to the area of the lands which were agreed to be sold, a decree for specific performance of the contract could not be passed. The Courts below were also in error in holding that, due to the acquisition of the area admeasuring 1H and 62 R by the State Government for Mumbai Pune Express Highway project, the performance of the contract could not be specifically enforced.

4. The material on record does indicate that the learned District Judge has taken a correct view of the matter. From the perusal of the Agreement for Sale dated 27 February 1988, which was executed in supersession of the Agreement for Sale dated 2 September 1987, it becomes evident that the deceased defendant had agreed to sell 3 Acres land out of Gat No.229 as per choice of the Plaintiffs. Incontrovertibly, a particular parcel of the land was not identified when the agreement for sale was executed, though the land agreed to be sold was identifiable.

5. The learned District Judge has, upon appreciation of evidence, recorded that on 23 September 1990, the Plaintiffs had identified three Acres

of land which was to be sold by the Defendants to the Plaintiffs. However, the said identified land formed part of the land which was already acquired by the State Government, under the Land Acquisition Act, 1894. Therefore, the submission of Mr. Deshmukh that, since the area of Gat No.229 was 5 H 91.03 R, the land acquisition by the State Government had no bearing on the contract in question, does not carry any substance as the land which the parties subsequently identified for sale was acquired by the State Government.

6. Secondly, the learned District Judge correctly appreciated the recitals in the Agreement for Sale dated 27 February 1988. From the perusal of the said Agreement for Sale as a whole, the intent of the parties becomes explicitly clear. The transaction was to be completed within one month of the grant of permission for NA use of the said land. The Plaintiffs were to incur the expenses to the tune of Rs.10,000/- per acre for obtaining NA permission. Such NA permission was to be obtained within a period of six months. In the event, the permission for NA use could not be obtained, the amount paid by the purchasers would be refunded immediately. If the permission was not obtained within the said period of six months, or the proposal was rejected, the Defendants – vendors would refund the entire amount along with interest @ 12% p.a. beyond the said stipulated period of six months.

7. If the recitals in the Agreement for Sale are read in conjunction with each other, it becomes abundantly clear that NA use permission was a condition precedent. In a sense, that was the substratum of the contract. Upon the failure to obtain NA use permission within six months, the contract was determinable.

8. In that context, the Courts below have recorded findings of facts that the Plaintiffs failed to perform their part of the contract. In any event, the failure to obtain permission for NA use within the stipulated period, rendered the contract determinable. Resultantly, the learned District Judge was fully justified in passing a decree for refund of the amount along with interest @ 12% p.a. In a situation of the present nature, the Courts below have correctly exercised the discretion not to grant specific performance of the contract. Such concurrent findings of facts do not merit interference in exercise of the appellate jurisdiction governed by the regime of Section 100 of the Code of Civil Procedure, 1908.

9. Resultantly, the Second Appeal stands dismissed.

10. In view of the dismissal of the Second Appeal, the Interim Application No.3330 of 2026 also stands disposed.

(N.J.JAMADAR, J.)