



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.371/2025

APPELLANTS:

- 1) Smt. Saraswati Wd/o Chirkut Meshram
A/o 62 Years, Occ. Household.
- 2) Sunil S/o Chirkut Meshram
A/o 40 Years, Occ. Private.
- 3) Jeetendra S/o Chirkut Meshram
A/o 38 Years, Occ. Private.
- 4) Deepali D/o Rajendra Gondale
(Daughter of Jyoti Rajendra Gondale @Jyoti
D/o Chirkut Meshram (Deceased))
A/o 18 Years, Occ. Student.

All (1) to (4) R/o New Koradi,
Opp. Veterinary Hospital, Floor Mill,
Tah. Patansaongi, Dist. Nagpur.

- 5) Hemlata W/o Shishir Bodhi
A/o 41 Years, Occ. Household,
R/o Ward No. 12, Vihirgaon, Village:
Mul, District: CHANDRAPUR

...VERSUS...

RESPONDENTS : 1) Shriram S/o Narayanrao Tidke
A/o 60 Years, Occ. Private,
R/o Manewada Ring Road,
NAGPUR.

* Address amended

Shriram Narayan Tidke
Age About 61 years, Occ. Private
R/o Opp. House of Ex-MLA Sudhakar
Kohale, Manewada Ring Road,
Janki Nagar, Manewada, Nagpur – 400 024.

(Amendment carried out as per Registrar (J)
Order dated 29.8.24)

2) Ravindra S/o Namdeorao Ghodmare
A/o 40 Years, Occ. Private,
R/o Karnal Bagh, Model Mill Chowk,
NAGPUR.

3) Santosh Kumar S/o Shrinath Morya
A/o 33 Years, Occ. Private.

4) Vinod Kumar S/o Shrinath Morya
A/o 30 Years, Occ. Private.

Both (3) & (4) R/o Plot No. 470, Jagwanti Palace,
Old Pardi Naka, Bhandara Road, NAGPUR.

5) Sundarabai Wd/o Harishchandra Meshram
A/o 67 Years, Occ. Household;

6) Ratnakar S/o Harishchandra Meshram
A/o 52 Years, Occ. Private;

7) Balya S/o Harishchandra Meshram
A/o 47 Years, Occ. Private;

All (5) to (7) R/o Village: Pandhurna,
Tahsil: Kamptee, District: NAGPUR.

8) Sou. Chhaya Ramesh Marbate,
R/o Sillewara, (Khaperkheda),
Tahsil: Parseoni, District: NAGPUR.

* Address of R-8 amended

8) Sau. Chaya Ramesh Marbate
Ward No.6, Durga Chowk,
Post Sillewada, Tah. Saoner, Dist. Nagpur.

(Amendment as per Court's order
dated 8.5.2025 in CAO No.505/2025)

Mr. A.H. Jamal, Advocate for petitioners
Mr. G.B. Purohit, Advocate for respondent Nos.1 and 2
Mr. B.T. Sugandh, Advocate for respondent Nos.6 to 8

CORAM : ROHIT W. JOSHI, J.

DATE : 12/03/2026

ORAL JUDGMENT :

1. The present appeal is filed in order to challenge the judgment and decree dated 18/01/2022, passed by the learned Ad hoc District Judge-1, Nagpur in Regular Civil Appeal No.113/2015, whereby decree for specific performance of contract came to be passed by quashing and setting aside judgment and decree dated 19/01/2017, passed by the learned Civil Judge, Senior Division, Nagpur in Special Civil Suit No.534/2009.

2. The appellants are the original defendants and respondents are the original plaintiffs. The plaintiffs had filed suit for specific performance of contract being Special Civil Suit No.534/2009 *inter alia* contending that they had entered into agreement of sale dated 02/06/2007 with defendants in order to purchase the suit property, which is an agricultural land bearing No.19/3, admeasuring 0.93 HR at village Tarodi, Tq. Kamptee, District Nagpur. It is stated that the agreement was entered into @ Rs.12,00,000/- per acre for

consideration of Rs.24,00,000/-. As per the case of plaintiffs, a sum of Rs.6,00,000/-, amount of Rs.3,00,000/- each, was paid to the defendant Nos.1 and 2 on the date of agreement and balance sale consideration of Rs.18,00,000/- was agreed to be paid at the time of execution and registration of agreement. The date of execution and registration of sale-deed was 02/06/2007. According to the plaintiffs, they had paid a sum of Rs.11,00,000/- to defendant No.1 and Rs.7,30,000/- to defendant No.2 in terms of agreement and amount of Rs.5,70,000/- was outstanding. According to the plaintiffs, the fact of subsequent payment is admitted in subsequent agreement dated 20/06/2008. The plaintiffs contended that since the defendants avoided to execute the sale-deed, in terms of agreement, notice for compliance was issued on 23/03/2009. It is the case of the plaintiffs that the defendant Nos.1 and 2 did not get the land measured, which was necessary for completing the sale. It must also be stated that upon measurement of the land, total area thereof was found to be 1.10 HR and the defendant Nos.1 and 2 have sold 0.30 HR land to the defendant Nos.3 and 4 vide sale-deed dated 03/07/2010.

3. The defendants filed written statement, opposing the suit. The defendants admitted execution of agreement of sale dated 02/06/2007 and receipt of amount of Rs.6,00,000/- towards the sale

consideration. In the written statement, they did not deny receipt of Rs.12,30,000/-. They admitted having sold 0.30 HR land to the defendant Nos.3 and 4. The defendants contended that the plaintiffs failed to complete the transaction within the stipulated period and therefore, they were not entitled to decree for specific performance.

4. Based on rival pleadings, the learned Trial Court framed issues, on which parties led their evidence. The plaintiffs examined plaintiff No.2 and two other witnesses, namely, Ramkrushna Barsu Shinde (PW-2) and Purushottam Keshavrao Karadbhajane (PW-3), who are attesting witnesses to the agreement and receipts of further payments. The defendant Nos.1 and 2 examined defendant No.1 and one Sunil Chirkutrao Meshram, son of defendant No.2, as his witnesses.

5. Learned Trial Court has held that the plaintiffs had proved payment to the extent of Rs.6,00,000/- and had failed to prove further payment of Rs.12,30,000/-. It will be pertinent to state that although in the written statement, receipt of Rs.12,30,000/- is not disputed, during the course of evidence, the defendant Nos.1 and 2 altered their stand and disputed receipt of the said amount. The learned Trial Court did not take into consideration the admission in the written statement with respect to payment of further amount of Rs.12,30,000/-. The learned

Trial Court referred to the payment receipts at Exh.50, 51 and 52. It is observed that the said receipts did not bear signature of defendant Nos.1 and 2. The learned Trial Court has observed that receipts at Exhs.50 to 52 are shown to be executed by Sunil Chirkutrao son of defendant No.2. The learned Trial Court has observed that there was no explanation forthcoming from the plaintiffs for not taking signatures of defendant Nos.1 and 2 on the said receipts. The learned Trial Court also observed that since the signatures on the said receipts were also disputed, it was necessary for the plaintiffs to examine handwriting expert to prove that the document was signed by Chirkutrao Meshram. In such circumstances, the learned Trial Court recorded that the plaintiffs had failed to prove payment of further amount of Rs.12,30,000/-. As regards readiness and willingness, the learned Trial Court observed that there was no explanation for silence for a long period by the plaintiffs for not completing the sale transaction and therefore, they had failed to make out the case of readiness and willingness. Accordingly, the learned Trial Court granted decree for refund of amount of Rs.6,00,000/- with interest @ 18% per annum from the date of payment till its realization.

6. As stated above, the plaintiffs preferred Regular Civil Appeal No.113/2017, challenging the said decree. The learned first

Appellate Court directed the defendant Nos.1 and 2 to execute sale-deed in favour of the plaintiffs with respect to two acres of land in the suit property by receiving balance consideration of Rs.12,30,000/- along with interest @ 7% per annum from 02/06/2007 i.e. date of execution of agreement till the date of deposit.

7. It will be pertinent to mention that upon measurement, the total area of suit property was found to be 1.10 HR as against 0.93 HR. The defendant Nos.1 and 2 had sold 0.30 HR to defendant Nos.3 and 4. The learned first Appellate Court passed decree for specific performance with respect to remaining two acres i.e. 0.80 HR land.

8. Vide order dated 08/05/2025, following substantial questions of law were framed in the appeal :-

“i] Whether the learned First Appellate Court has erred in reversing the Judgment and Decree passed by the learned Trial Court thereby refusing to grant decree for specific performance of contract and having regard to the reasons recorded by the Trial Court in Para Nos 22 and 27 of the judgment ?

ii] Has the learned First Appellate Court erred in law in substituting the discretion exercised by the learned Trial Court, particularly in view of inaction on the part of plaintiffs to take appropriate steps for enforcement of agreement within the stipulated period of one year fixed for execution of sale deed ?

iii] Whether the provisions of Specific Relief Act as amended by Specific Relief Amendment Act, 2018 will be applicable in the present case in which the agreement in question is executed between the parties on 02/06/2007 ?"

Substantial question of law No.(iii) :-

iii] Whether the provisions of Specific Relief Act as amended by Specific Relief Amendment Act, 2018 will be applicable in the present case in which the agreement in question is executed between the parties on 02/06/2007 ?"

9. The agreement of sale is dated 02/06/2007. The specific relief (Amendment) Act, 2018 has come into force w.e.f. 01/08/2018. The provisions of Specific Relief Act, as amended by the Amendment Act, 2018, will therefore not be applicable to the present case. Legal position in this regard is well settled by the judgment of the Hon'ble Supreme Court in the case of ***Annamalai Vs. Vasanthi and others***, reported in **2025 SCC OnLine SC 2300**. The substantial question of law No.(iii) is answered accordingly.

Substantial question of law No.(i) and (ii) :-

"i] Whether the learned First Appellate Court has erred in reversing the Judgment and Decree passed by the learned Trial Court thereby refusing to grant decree for specific performance of contract and having regard to the reasons recorded by the Trial Court in Para Nos 22 and 27 of the judgment ?

ii] Has the learned First Appellate Court erred in law in substituting the discretion exercised by the learned Trial Court, particularly in view of inaction on the part of plaintiffs to take appropriate steps for enforcement of agreement within the stipulated period of one year fixed for execution of sale deed ?

10. In order to answer substantial questions of law Nos.(i) and (ii), this Court is taking recourse to Section 103 of the Code of Civil Procedure. The learned first Appellate Court has concurred with the learned Trial Court in holding that the plaintiffs had failed to prove payment of further amount of Rs.12,30,000/-. The learned first Appellate Court has discarded the receipts on the ground that the said receipts were not signed by the defendant No.1 or defendant No.2. It will be pertinent to state that just like the learned Trial Court, the learned first Appellate Court also failed to take into consideration the fact that payment of this amount was not disputed in the written statement. It will be appropriate to refer to the relevant portion in the plaint and the written statement in this regard.

11. The plaintiff has stated in paragraph 5 (I) that he had paid amount of Rs.11,00,000/- to the defendant No.1 as under :-

“I) Consideration amount given to the defendant No.1 namely Harichand Meshram by both the plaintiffs jointly &

severally towards purchase of suit field is as under-

Rs. 3,00,000 = 00 on the date of Agreement of sale,

Rs. 1,00,000 = 00 on 21-06-07 in cash.

Rs. 3,00,000=00 on 27-02-08 in cash.

Rs. 4,00,000=00 on 20-06-08 in cash.

Rs.11,00,000=00 Total consideration amount.

The defendant No.1 also executed an agreement on 20-06-2008 thereby mentioned about receipt of above said consideration amount of Rs.11,00,000/-. The said agreement signed by Defendant No.1 in presence of both Plaintiffs & two attesting witness. The photo of both plaintiffs, defendants No.1 & 2 two attesting witness is also affixed on said agreement Dated 20-06-08. The said agreement Dated 20-06-08 is also attested by Notary Adv. Vijayanti H. Dongaonkar.”

Similarly, the plaintiff has stated in paragraph No. 5 (II) that he has paid a sum of Rs.7,30,000/- to the defendant No.1. Paragraph No.5 (II) is reproduced as under :-

“II) Consideration amount given to Defendant No.2 namely Chirkut Meshram by both the plaintiffs jointly & severally towards purchase of suit field is as under :-

Rs.3,00,000=00 On date of Agreement of sale

Rs.2,00,000=00 On 26-10-2007

Rs.1,00,000=00 On 21/01/2008

Rs.50,000=00 On 12-02-2008

Rs.50,000=00 On 17-03-2008

Rs.30,000=00 On --

Rs.7,30,000=00 Total Consideration Amount

The Defendant No.2 also executed separate receipt on stamp paper regarding receipt of amount as mentioned above. Some of receipt singed by defendant No.2 & some of receipt signed by Sunil Chirkut Meshram who is real son of Defendant No.2.”

12. In response to the said pleadings, the defendant Nos.1 and 2, have stated in paragraph Nos.5(I) and 5 (II) in their written statement as under : -

*“5(I). **As to paragraph no.5 (I) of the plaint** : The contents of this paragraph are partly admitted. It is specifically denied that the photo of defendant no.2 is affixed on the alleged agreement dated 20th of June, 2008*

*5(II). **As to paragraph no.5 (II) of the plaint** : That the contents of this paragraph being a matter of record need no reply.”*

13. Perusal of response to paragraph No. 5 (i) will demonstrate that the contents with respect to payment of amount are not disputed by the defendants. They have merely denied that photograph of defendant No.2 was affixed to the agreement dated 20/06/2008. With respect to paragraph 5 (ii), it is specifically stated that the contents of paragraph

did not warrant any reply since they are matter of record. Thus, there is no denial to the payment of amount to the extent of Rs.18,30,000/-.

14. It will be pertinent to mention that with the able assistance of the learned Advocates, I have perused the entire written statement including the specific pleadings. The statement regarding payment of further amount of Rs.12,30,000/-, in addition to amount of Rs.6,00,000/-, is not disputed in the written statement at other places in the written statement, as well.

15. As regards the subsequent agreement also the defendant Nos.1 and 2 have not specifically denied the same in response to paragraph No.5 (i). The defendant No.1 has stated in his written statement that the plaintiffs took his signature on the subsequent agreement dated 20/06/2008 under impression that the same was already signed by the defendant No.2 and accordingly by misleading him, subsequent agreement is executed. It will be pertinent to mention that the defendant Nos.1 and 2 have filed separate written statement dated 01/04/2010. The written statements are identical, except paragraph 15 of the written statement, where the defendant No.1 has admitted to have executed subsequent agreement dated 20/06/2008, although explanation that it was got executed under impression that

defendant No.2 had already executed the same. The defendant No.2 has stated with respect to subsequent agreement that since both the defendants are joint owners, the agreement signed by defendant No.1 alone is not a valid agreement.

16. The learned first Appellate Court has observed that it was necessary to carry out measurement of the suit property before completing the sale transaction. The learned first Appellate Court has observed that although measurement was carried out, the plaintiffs were not apprised about the measurement of the land. It is observed that the defendants did not even mention in their legal notice that intimation with respect to measurement was given to the plaintiffs. The learned first Appellate Court has observed that although period of one year was stipulated for execution of sale-deed, defendants did not apprise the plaintiffs about measurement of the land, which was necessary for execution of sale-deed and accordingly, held that the plaintiffs could not be held responsible for failure to complete the transaction within a period of one year. It must also be stated that the defendant No.1 admitted in the cross-examination that intimation about measurement or even the measurement map, after the measurement was carried out, was not provided by the defendants to the plaintiffs. This measurement was carried out on 23/03/2008. The defendants had

issued notice dated 19/07/2008 to the plaintiffs, calling upon them to complete the transaction within a period of 15 days from the date of receipt of the said notice. The plaintiffs issued reply-notice dated 25/07/2008 agreeing to complete the sale transaction. The plaintiffs issued another notice dated 23/03/2009 for specific performance of contract and filed the suit on 09/06/2009. Pursuant to order dated 07/09/2011, passed by this Court in Appeal Against Order No.3/2011, the plaintiffs have also deposited amount of Rs.5,70,000/-, which was the balance sale consideration, according to them.

17. These factors have weighed with the learned first Appellate Court in allowing the appeal, directing the defendants to execute the sale-deed to the extent of 0.80 HR i.e. two acres land in the suit property. The learned first Appellate Court has not disturbed the sale-deed dated 03/07/2010, executed by defendant Nos.1 and 2 in favour of defendant Nos.3 and 4 to the extent of 0.30 HR land.

18. It is well settled that normally discretion exercised by the learned Trial Court with respect to granting decree for specific performance of contract should not be disturbed by the learned Appellate Court. The judgment of the learned Trial Court is reversed by the learned first Appellate Court. The learned first Appellate Court has

taken into consideration the fact that intimation about measurement or the measurement map was not provided by the defendants to the plaintiffs, which was necessary for execution of sale-deed. Predominantly, the learned first Appellate Court has reversed the decree with respect to denial of relief for specific performance.

19. Both the Courts have held that payment of further consideration of Rs.12,30,000/- is not proved by the plaintiffs. However, as noted above, the said observation is completely unsustainable, since it ignores admission in the written statement regarding payment of money. The plaint averments, which are not controverted in the written statement, do not need any further evidence. However, in the present case, one can find corroboration in the form of subsequent agreement and receipts. The receipts, subsequent agreement and uncontroverted plaint averments indicate that payments were offered and received after the target date i.e. 02/06/2008. Payment of Rs.4,00,000/- is made by the plaintiff to the defendant No.1 on 20/06/2008. The plaintiff has paid around 75% of the agreed sale consideration before institution of suit, which is a positive indication of his readiness and willingness. It must also be stated that although measurement of the suit land was carried out, intimation with respect to same was not given to the plaintiff and even copy of map was not supplied. The findings by the

learned first Appellate Court on this aspect are arrived at by considering the admissions of defendant No.1 in his cross-examination. The fact that the plaintiff deposited amount of Rs.5,70,000/- with the learned Trial Court, pursuant to order passed during the course of proceedings, is also indicator of his readiness and willingness.

20. In view of the aforesaid, although for different reasons, I intend to concur with the view taken by the learned first Appellate Court that the plaintiff is entitled to decree for specific performance of contract. It will be pertinent to mention that decree for specific performance is granted by directing the plaintiff to make payment of balance sale consideration of Rs.18,00,000/-, although payment of Rs.12,30,000/- was already made by him, in addition to earnest amount of Rs.6,00,000/-. This is also a relevant factor for confirming the decree for specific performance.

21. Substantial question of law Nos.(i) and (ii) are accordingly answered in favour of the plaintiffs/respondent Nos.1 and 2 and against the defendant Nos.1 and 2. It is, however, clarified that the sale-deed of defendant Nos.3 and 4 with respect to 0.30 HR land will not be affected by the present judgment.

22. In view of the aforesaid, Second Appeal is dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar