



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

SECOND APPEAL NO.19 OF 2026

APPELLANT

On R.A.

:- Raju S/o Kanhaiyalal Thadani, Age-60 yrs, Occ-agriculturist, R/o Nava Nakasha, Lashkaribagh, Presently Residing at Flat No.202, J.P. Enigma, Kadbi Chowk, Post Bezonbagh Nagpur

.... Ori. Plaintiff

..VERSUS..

RESPONDENTS

On R.A.

:- 1 Shri Deorao S/o Chindhuji Bharti, Age-74 yrs, Occ-Cultivator,

2 Pushplata w/o Devrao Bharti, Age-68 yrs, Occ-retired,

Both R/o "Starkey" Building No.2, Flat No.16, Mangalwari Bazar, Sadar, Nagpur.

3 Sau. Suman Padmakar Puri, Aged about major, Occ-nil, R/o. Building no.14/1, Mhada colony, (L.I.G.) Kukde lay out, Opposite Empress Mill colony, Wanjari Nagar, Nagpur.

....Ori. Defendants

Mr. T. H. Bewali, Advocate for Appellant.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **06.03.2026**

JUDGMENT :

1) The present appeal is preferred challenging judgment and decree dated 03.05.2024 passed by the learned Ad-hoc District Judge-5, Nagpur in Regular Civil Appeal No.587 of 2016, whereby the learned First Appellate Court has reversed the judgment and decree dated 19.08.2016 passed by the learned Joint Civil Judge, Junior Division, Kalmeshwar in Regular Civil Suit No.182 of 2012.

2) The appellant in the present appeal is the original plaintiff. It is the case of the appellant that he had entered into an agreement of sale with respect to suit property, which is an agricultural land, for a consideration of Rs.1,05,000/- with the defendants on 10.09.2004. The suit is filed on 30.08.2012.

3) It is the case of the plaintiff that on 14.10.2010, defendant No.1 had executed a chit, *inter alia* agreeing to abide by the agreement dated 10.09.2004.

4) The learned Trial Court has decreed the suit holding that the agreement of sale was duly proved and that the plaintiff had also proved that he was all the while ready and

willing to perform his part of the contract.

5) As regards limitation, the learned Trial Court has held that the limitation for filing the suit stood extended in view of the chit dated 14.10.2010, which is at Exhibit-59. Defendant No.1, during his cross-examination has admitted his signature on the said chit.

6) The learned First Appellate Court, as stated above, has reversed the decree and dismissed the suit. The learned First Appellate Court has observed that the chit dated 14.10.2010 does not refer to the agreement of sale dated 10.09.2004 or to the suit property. It is also found that the parties did not arrive at any settlement as on 14.10.2010. I have perused the said chit dated 14.10.2010 at exhibit 59. Defendant No.1 has mentioned in the said document that he admits having received money from the plaintiff against the agricultural land. The document, as rightly observed by the learned First Appellate Court, does not indicate that the parties had arrived at any settlement. Likewise, reading of the document also does not indicate that the defendant has admitted the agreement of sale. The document can also be

interpreted to mean that the defendant had borrowed amount against agricultural land, which is his case in the written statement.

7) As stated above, the agreement in question is dated 10.09.2004. A period of 11 months was stipulated for completing the sale transaction by execution and registration of sale deed. Limitation under Article 54 of the Limitation Act, 1963 therefore, commenced on 10.08.2005. The suit which is filed on 30.08.2012, is therefore clearly barred by limitation. It must also be stated that the agreement in question is dated 10.09.2004, whereas the chit on which the plaintiff places reliance is dated 14.10.2010. The delay in filing the suit, in the circumstances, by itself is a good enough reason to confirm the finding recorded by the learned First Appellate Court that the plaintiff has failed to prove that he was ready and willing to perform his part of the contract. The suit is therefore rightly dismissed by the learned First Appellate Court with respect to the prayer for specific performance of contract.

8) As regards the prayer for refund of earnest, perusal of the chit dated 14.10.2010 at Exhibit 59 only indicates admission of defendant No.1 of having received some money from the plaintiff against the suit property.

9) It appears that defendant No.1 asked the plaintiff to accompany him to his residential house for compromise talks. The chit does not indicate express admission of liability to extend the period of limitation. Moreover, the chit dated 14.10.2010 is issued after the period of limitation and expired on 10.08.2008, therefore it cannot have the effect of extending the period of limitation as per Section 18 of the Limitation Act, 1963.

10) The learned advocate for the appellant places reliance on judgment of the Hon'ble Supreme Court in the case of *Usha Devi and Ors. Vs. Ram Kumar Singh and ors, (Civil Appeal No.8446 of 2024 decided on 05.08.2024)*. He places reliance on paragraph 12 thereof. Perusal of paragraph 12 indicates that the Hon'ble Supreme Court invoked Article 142 of the Constitution of India to do complete justice between the parties. The observations in paragraph 12 are

not ratio of the judgment and therefore cannot be followed as a precedent. Since the suit for specific performance is barred by limitation, decree for refund of earnest also cannot be granted.

11) No substantial question of law arises for consideration in the present Second Appeal. Second is, therefore, **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..