



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

Second Appeal No.151/2024

1. M/s Chhaganlal & Company,
Registered with Registrar of Firms at No.730 of 1979-90
and dissolved on 31.03.1992 by ex-partners,
Chhaganlal Chiranjilal Agrawal (Died),through L.R.s.

1. Sitadevi Chhaganlal Agrawal (**Deleted as died**)

ii. Rajkumar Chhaganlal Agrawal
Age 44 years, Occ-Agriculturist,
R/o.Inside Jawahar Gate, Amravati.

iii. Usha Rajesh Chokhani,
Aged 50 yrs, Occ.-Agriculturist,
R/o. Flat No.303, 'Aster' Kumar Suraksha Society,
Near Walcome Hall, Kondwa Khurd, Pune 411048
through P.O.A. Rajkumar C. Agrawal.

iv. Neeta Pradip Mangal,
Age 38 years, Occ-Agriculturist,
R/o. 29/B Zakaria Street, Kolkata- 700023.
Through P.O.A. Rajkumar C. Agrawal.

2. Sushiladevi Radheshyam Agrawal,
Age 55 years, Occ-Homemaker,
R/o.Inside Jawahar Gate, Amravati.

.... Appellants.
(Ori. Plaintiffs)
On R.A.)

-Versus-

1. Shyam Murlidhar Mahalle,
Age 40 years, Occ-Agriculturist,
R/o. Bapu Nagar, Digra, Dist.Yavatmal.

.... Respondent
(Ori. Defendant)
On R.A.)

Second Appeal No.85/2024

1. M/s Chhaganlal & Company,
Registered with Registrar of Firms at No.730 of 1979-90
and dissolved on 31.03.1992 by ex-partners,
Chhaganlal Chiranjilal Agrawal (Died),through L.R.s.

1. Sitadevi Chhaganlal Agrawal (**Deleted as died**)

ii. Rajkumar Chhaganlal Agrawal
Age 44 years, Occ-Agriculturist,
R/o.Inside Jawahar Gate, Amravati.

iii. Usha Rajesh Chokhani,
Aged 50 yrs, Occ.-Agriculturist,
R/o. Flat No.303, 'Aster' Kumar Suraksha Society,
Near Walcome Hall, Kondwa Khurd, Pune 411048.

iv. Neeta Pradip Mangal,
Age 38 years, Occ-Agriculturist,
R/o. 29/B Zakaria Street, Kolkata- 700023.

2. Sushiladevi Radheshyam Agrawal,
Age 55 years, Occ-Homemaker,
R/o.Inside Jawahar Gate, Amravati.

.... Appellants.
(Ori. Plaintiffs)
On R.A.)

-Versus-

1. Shrikant Murlidhar Mahalle,
Age 40 years, Occ-Agriculturist,
R/o. Bapu Nagar, Digras, Dist.Yavatmal.

.... Respondent
(Ori. Defendant)
On R.A.)

Mr. J.J. Chandurkar, Advocate for appellants.
Mrs. R.D. Raskar, Advocate for respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 12-02-2025.

Oral Judgment

Heard.

2. Both these second appeals give rise to adjudication of common substantial question of law. The plaintiff in both the appeals is the same partnership firm and the defendants are the real brothers. Therefore, the appeals are being decided by the common judgment.

3. By two separate agreements dated 08-03-1995, the defendants had entered into agreements of sale with respect to suit properties in favour of the plaintiff, *inter alia* agreeing to sell the same for consideration enumerated therein. In terms of both these

agreements, the outer limit for execution of sale deed is specified as 30-10-1987. The sale transaction could not be completed in terms of the agreements. As a consequence of which, the plaintiff filed two suits for specific performance of contract being Special Civil Suit No.235/2000 and Special Civil Suit No.236/2000. In both the suits, alternate prayer for refund of consideration paid by the plaintiff to the defendants was also made. Both the suits came to be dismissed by the learned Joint Civil Judge, Senior Division, Amravati, by its separate judgments dated 28-04-2005. The unsuccessful plaintiff preferred two separate appeals being Regular Civil Appeal Nos.116/2012 and 115/2012. The appeals also came to be dismissed by two separate judgments dated 08-12-2023. Both the learned Courts have dismissed the suits on the ground that the same were barred by limitation. The other grounds on which the suits are dismissed are not relevant since the substantial question of law is framed only with respect to refund of consideration only. Since the outer limit for execution of sale deed is specified under the agreement, the limitation of three years for filing the suit shall commence from the said date. The limitation for filing the suit for specific performance accordingly came to an end on 30-10-1990.

4. Learned Courts have rightly summarized the legal position in this regard to hold that the suits for specific performance filed in the year 2000 were barred by limitation. It is obvious that if

the suit for specific performance is barred by limitation, the alternate relief for refund of consideration paid by the plaintiff to the defendants in terms of the agreements will also be barred by limitation. Learned Advocate for the respondents has rightly placed reliance on judgment of the Hon'ble Supreme Court in the case of *Nikhila Divyang Mehta and another vs Hitesh P. Sanghvi and others*, reported in 2025 SCC OnLine SC 779, which reiterates the aforesaid legal position.

5. In view of the aforesaid, the substantial questions of law framed in the appeals are required to be answered against the appellants/original plaintiffs and in favour of the respondents/original defendants. Both the Second Appeals are therefore dismissed. No order as to costs.

(Rohit W. Joshi, J.)