



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

SECOND APPEAL NO.94 OF 2024

APPELLANT

Ori. Plaintiff
On R. A.

:- Shri Sachin S/o. Vijayrao Sumbhate
Aged about 46 years, Occ. Business,
R/o. Ayodhya Apartment, Flat No.A-
12, Shivaji Complex, Mankapur,
Nagpur.

..VERSUS..

RESPONDENTS

Ori. Plaintiff
On R. A.

:- Smt. Seema Wd/o Manikrao Vaidya
Aged about 63 years, Occ. Business,
R/o.55(A), NIT Commercial Layout,
Trimurti Nagar, Ring Road, Nagpur.

Mr. Shailesh S. Sitani, Advocate for Appellant.
Mr. Ashish A. Bhide, Advocate for the Respondent.

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

DATE : **13.02.2026**

J U D G M E N T :

1) Heard finally with consent of learned advocates for the respective parties.

2) The present second appeal arises out of judgment and decree dated 09.11.2023 passed by the learned District Judge-5 in Regular Civil Appeal No.342 of 2018, whereby the learned Court has reversed judgment and decree dated

27.04.2018 passed by the learned Second Joint Civil Judge, Junior Division, Nagpur in Regular Civil Suit No.139 of 2013.

3) The appellant in the present appeal is the original plaintiff and respondent is the original defendant. Parties will be referred as “plaintiff” and “defendant” hereinafter.

4) The plaintiff had filed aforesaid suit for specific performance of contract. It is the case of the plaintiff that he had entered into agreement of sale with respect to the suit property which comprises of four plots bearing Nos.226, 227, 240 and 241 at Village- Welahari, Khasara No.62/1 and 63/1, each admeasuring 600 Square Feet each for a consideration of Rs.2,64,000/- on 27.08.2008 with husband of the defendant late Manikrao, who expired on 10.08.2010. It is the case of the plaintiff that he has paid entire sale consideration to the husband of plaintiff. The plaintiff filed suit contending that the defendant assured to execute the sale deed, but ultimately avoided to do so. It will be pertinent to mention that at places, the plaintiff has also made averment in the plaint that the agreement was entered into with the defendant. However, it seems that his case is that the

agreement was entered into with husband of defendant and that the defendant is looking after business of the husband after his demise.

5) The defendant filed written statement denying the agreement, as also receipt of sale consideration of Rs.2,64,000/-. However, the defendant also stated that the parties had arrived at a settlement after negotiations and accordingly defendant had refunded amount of Rs.1,80,000/- to the plaintiff through a cheque dated 27.12.2012 and that the plaintiff received the said amount in full and final settlement of the claim with respect to suit property and another plot.

6) The learned Trial Court has decreed the suit for specific performance. The learned Trial Court has predominantly relied upon the possession letter at Exhibit 42 and cash receipts dated 19.09.2008 and 19.10.2008 at Exhibits 44 and 43 to arrive at finding that the plaintiff had proved the oral agreement.

7) Aggrieved by the aforesaid decree, the defendant preferred first appeal, being Regular Civil Appeal No.342 of

2018. The learned First Appellate Court has allowed the appeal holding that the plaintiff failed to prove the alleged oral agreement and that the defendant had proved her case of cancellation of agreement by receiving sum of Rs.1,80,000/-.

8) Aggrieved by the aforesaid decree passed in the first appeal, the original plaintiff has filed the present Second Appeal.

9) Mr. Sitani, learned Advocate for the appellant draws attention to the possession receipt at Exhibit 42 and contends that although the agreement is an oral agreement, the contents of possession letter clearly establish that plaintiff had entered into agreement of sale with defendant's husband and that he had paid the entire sale consideration as agreed. He contends that the learned First Appellate Court has grossly erred in holding that the plaintiff had failed to prove the agreement with respect to the receipt of amount of Rs.1,80,000/-. He further contends that the said amount was received against some other transaction and not against cancellation of the suit agreement as alleged by defendant.

10) The learned First Appellate Court has referred to the pleadings and evidence of the plaintiff and has held that the evidence was not consistent with the pleadings. It is held that since case of oral agreement is set up by plaintiff, it is essential that the evidence must be in accordance with the pleadings. The learned First Appellate Court has also accepted the case of defendant regarding cancellation of agreement in view of the receipt at Exhibit 36 and ledger at Exhibit 37 regarding receipt of amount of Rs.1,80,000/- by the plaintiff from the defendant.

11) I have perused the judgments delivered by both the learned Courts as also the pleadings and depositions alongwith relevant exhibited documents, particularly exhibits 42, 36, 37 and 38. At the outset it must be stated that in order to succeed in a suit for specific performance of contract based on oral agreement, the plaintiff must prove that the parties had entered into an agreement as also the exact terms of agreement arrived at between the parties. In the case at hand, although the defendant denied the agreement, she has also come up with a case of cancellation of the agreement. It

is therefore, clear that the fact that plaintiff had entered into agreement with husband of defendant is undisputable. Having held so, it must be also stated that the evidence on record is not sufficient to arrive at a conclusion that the agreement was arrived at for total sale consideration of Rs.2,64,000/- The plaintiff has failed to prove the same. As against the specific case of plaintiff that the total agreed sale consideration was Rs.2,64,000/-, in the possession letter at Exhibit 42 relied upon by him, the agreed consideration is mentioned as Rs.12,000/-, the plaintiff has not offered any explanation for this. Perusal of possession letter will indicate that consideration of Rs.12,000/- only is paid by plaintiff.

12) Apart from the above, perusal of the receipt at Exhibit 36 will indicate that the plaintiff has admitted that the agreement with respect to the suit properties was mutually terminated upon receipt of consideration payable to him for cancellation of the agreement. The plaintiff has issued receipt accepting cheque of Rs.1,80,000/-. The cheque is duly credited in the account of plaintiff as can be seen from the document at Exhibit 38. It will be pertinent to state that

in the right, top corner of Exhibit 37 reference is made to Plot No.123 only and not to the four plots, which are subject matter of the suit. However, the acknowledgment in the middle portion of the page makes a reference to the aforesaid Plot No.123 as also to the four suit plots. Thus, the finding by the learned First Appellate Court with respect to cancellation of agreement upon refund of Rs.1,80,000/- is a finding based on appreciation of evidence. The said finding cannot be interfered with in a Second Appeal. The learned Trial Court has failed to appreciate documentary evidence which confirms cancellation of agreement and also inconsistency with respect to agreed sale consideration as per the case set up by the plaintiff and the contents of the alleged possession letter.

13) In view of the above, in the considered opinion of this Court, although the plaintiff has proved that he had entered into an agreement of sale with respect to the suit property, he has failed to prove the exact terms and conditions of the agreement as also his contention regarding payment of Rs.2,64,000/-. Likewise, the defendant has duly

proved that the agreement was mutually cancelled.

14) In view of the above, no substantial question of law arises for consideration in the present Second Appeal. Second Appeal is **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..