



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

SECOND APPEAL NO.262 OF 2024

APPELLANT

(On R.A.)

:- Pralhad S/o Ramchandra Kumbhalwar,
Aged about 53 years, Occu:-Agriculturist,
r/o Kochewahi, Post Banathar, Tah. & Dist.
Gondia (Original Defendant)

..VERSUS..

RESPONDENTS

(On R.A.)

- :-**
- 1) Antakala w/o Ramesh Kumbhalwar, Aged about 58 years, Occu:- household,
 - 2) Vijay s/o Ramesh Kumbhalwar, Aged about 36 years, Occu:- Education,
 - 3) Sanjay s/o Ramesh Kumbhalwar, Aged about 31 years, Occu:- Education,
 - 4) Jyoti d/o Ramesh Kumbhalwar, Aged about 38 years, Occu:-service,
 - 5) Sangita w/o Vinay Kurve, Aged about 33 years, occu:- household,
All r/o Basant Nagar, Azad Ward, Gondia,
Tah. & Dist. Gondia. (Original Plaintiff)
 - 6) Yela w/o Pralhad Kumbhalwar, Aged about 44 years, occu:- Agriculturist,
Both r/o Kochewahi, Post Banathar, Tah. & Dist. Gondia (Original Defendant No.2)
 - 7) Gaurishankar s/o Ramcharan Kumbhalwar, Aged about 58 years, occu:- Agriculturist,
R/o BHM College Road, Basant Nagar, Azad Ward, Gondia, Tah. & Dist. Gondia. (Original Defendant No.3)

Mr. C.V. Bhagwani, Advocate for Appellant.

Mr. I.S. Charlewar, Advocate for Respondent Nos.1 to 5.

Ms. R.R. Nagrare, Advocate for Respondent Nos.6 and 7.

CORAM : ROHIT W. JOSHI, J.

DATE : 04/02/2026

ORAL JUDGMENT :

1. The appellant in the present appeal is original defendant No.1 in Regular Civil Suit No.269 of 2012, filed by the present respondent Nos.1 to 5 seeking specific performance of contract. The respondent Nos.6 and 7 are wife and brother, respectively, of the appellant.

2. It is the case of the plaintiffs that one Ramesh Kumbhalwar, husband of plaintiff No.1 and father of other plaintiffs, had entered into agreement of sale with respect to the suit property with the defendant No.1, *inter alia* agreeing to purchase the same for consideration of Rs.1,30,000/- and that they were placed in possession of the suit property in terms of the said agreement. It is also their case that they have made payment of the entire sale consideration of Rs.1,30,000/- to the defendant No.1. The prospective purchaser Ramesh expired on 29.11.2009. The plaintiffs, who are his wife and children, filed suit for specific performance of contract on 11.10.2011. The said suit, being Regular Civil Suit No.269 of 2012, came to be decreed vide judgment and

decree dated 16.08.2016 passed by the learned Joint Civil Judge Junior Division Gondia. Aggrieved by the said decree for specific performance of contract, the defendant No.1 preferred the first appeal being Regular Civil Appeal No.83 of 2018, which came to be dismissed by the learned Principal District Judge, Gondia, vide judgment and decree dated 09.01.2024.

3. It will be pertinent to state that before institution of the suit, the defendant No.1 had executed the sale deed dated 10.11.2009 in respect of the suit property in favour of the defendant Nos.2 and 3, who are his wife and real brother, respectively. The defendant No.3, who is brother of the present appellant/defendant No.1, has filed appeal challenging the decree for specific performance of contract, being Second Appeal No.164 of 2024. The said appeal is dismissed by this Court on 12.09.2024.

4. Before dealing with the merits of the matter, it must be placed on record that the present appellant, who is real brother of appellant in Second Appeal No.164 of 2024, has not apprised this Court about dismissal of the appeal preferred by his brother. It must also be placed on record that the said appellant, who is respondent No.7 in the present appeal, has also not apprised this Court about dismissal of the appeal. This fact is brought to the notice of this

Court by the office, since Second Appeal No.164 of 2024, preferred by the present respondent No.7, arises out of the same civil suit.

5. As regards merits of the matter, Mr. Bhagwani learned Advocate for the appellant contends that the agreement of sale, being an unregistered document, is inadmissible in the evidence. He contends that plot number of the suit plot is not mentioned in the agreement, the suit was barred by limitation and the suit was not maintainable in absence of any prayer for cancellation of sale deed dated 10.11.2009, which is executed and registered prior to institution of suit.

6. The first contention with respect to the agreement being unregistered is liable to be rejected in view of proviso to Section 49 of the Registration Act, 1908, which states that an unregistered agreement of sale, even if required to be registered, is admissible in evidence in a suit for specific performance of contract.

7. As regards the subsequent sale deed dated 10.11.2009 executed by the defendant No.1 (vendor) in favour of defendant Nos.2 and 3, the learned Courts have concurrently held that the said sale transaction is a collusive transaction, designed only in order to defeat the claim of the plaintiffs based on the agreement of sale dated 30.06.2005. The findings recorded by both the learned

Courts on this aspect are just and proper. It must also be stated that substantive appeal preferred by one of the purchaser (defendant No.3) is already dismissed by this Court vide judgment and decree dated 12.09.2024.

8. As regards the limitation, the case of the plaintiffs is that they have been placed in possession of the suit property in terms of the agreement of sale and that the entire sale consideration is paid. Both the learned Courts have accepted this case of the plaintiffs based on appreciation of the evidence. Perusal of the agreement of sale does not disclose any outer limit for execution of the sale deed. The limitation for filing suit for specific performance is therefore commences from the date of refusal. The plaintiffs have issued notices for specific performance of contract on 15.06.2011 and 17.08.2011, in response to which the defendant No.1 had issued reply notices denying the case of the plaintiffs. The suit which is filed on 11.10.2011 is thus filed within a period of three years from the date of refusal and is accordingly within limitation.

9. As regards the contention that the plot number of the suit property is not mentioned in the agreement, it is seen that 'Thak Number' of the land in question is mentioned in the agreement, the total area of the suit property along with its boundaries is also

mentioned. In view of the aforesaid, it is apparent that the suit property can be identified on the basis of contents of the agreement. It should also be stated that it is not the case of the defendant No.1 that he owns any other plot of the same or similar dimensions within the limits of Gondia Municipal Council where the suit property is situated. The said contention is therefore liable to be rejected.

10. In view of the findings recorded above, no substantial question of law arises for consideration in the Second Appeal. Second Appeal is therefore **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate