

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

SECOND APPEAL NO.53/2026

Shri Giridhar S/o Natthuji Waghmare

...Versus...

Sunil S/o Ramkrushna Salbarde (dead) through its Legal Heirs

Smt. Tara wd/o Sunil Salbarde and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Mangesh V. Bute, Advocate for appellant
Mr. A.S. Wankhade, Advocate for respondent No.1A/Caveator

CORAM : ROHIT W. JOSHI, J.

DATE : 10/02/2026

1. The present second appeal is preferred, challenging the judgment and decree dated 21/08/2025, passed by the learned District Judge – 1, Warud in Regular Civil Appeal No.25/2023, whereby decree for specific performance of contract is granted by the learned first Appellate Court in favour of the respondent/original plaintiff by reversing the judgment and decree dated 20/01/2022, passed by the learned 9th Joint Civil Judge, Senior Division, Amravati in Special Civil Suit No.116/2015.

2. It is not in dispute that the plaintiff and defendant had entered into agreement of sale with respect to suit property for a consideration of Rs.6,50,000/- on 23/10/2013, out of which, the plaintiff had paid a sum of Rs.3,20,000/- to the defendant on the date of agreement and was placed in possession of the suit property on the said date. The

agreement of sale dated 23/10/2013 is a registered document. The parties are agreed for execution and registration of sale-deed on 22/09/2014. It appears that both parties were present in the office of Sub Registrar on 22/09/2014. However, on the said date, sale-deed could not be executed and registered, since there was encumbrance over the suit property.

3. The learned Trial Court has dismissed the suit for specific performance, filed by the plaintiff on the ground that plaintiff had failed to prove his readiness and willingness to perform his part of contract. The learned Trial Court also did not deem it appropriate to pass decree for refund of sale consideration admittedly received by the defendant from the plaintiff. The plaintiff, as stated above, has preferred Regular Civil Appeal No.25/2023.

4. The learned first Appellate Court has recorded a finding that the plaintiff had come up with a clear case in the pleadings and also in the evidence that the sale-deed could not be executed due to encumbrance over the suit property. Learned first Appellate Court has also dealt with the evidence of defendant, who categorically admitted the fact that as on the date stipulated for execution of sale-deed, there was encumbrance over the suit property and that the defendant had asked the plaintiff to obtain sale-deed by clearing loan and getting a clearance certificate from the Bank. The said evidence is not dealt with by the learned Trial Court. Learned first Appellate Court has found that there was encumbrance over the suit property to the extent of Rs.5,47,200/-, as against the balance sale consideration of Rs.3,30,000/- and has therefore found that the plaintiff was not at fault for not

getting the sale-deed executed on the agreed date. It needs to be stated that the plaintiff also had shortly thereafter filed suit for specific performance of contract.

5. The findings recorded by the learned first Appellate Court are pure findings of fact, which do not raise any substantial question of law. Perusal of findings, recorded by the learned Trial Court, will demonstrate that material admission by the defendant regarding encumbrance over the suit property has skipped the attention of the learned Trial Court.

6. In view of above, Second Appeal is dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)