



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

SECOND APPEAL NO.60 OF 2025

APPELLANT : Shri Rajiv s/o Chindhuji Kapse
Ori. Defdt
(On R.A.) Aged-56 years, Occ.- Cultivator, R/o
Bhiwapur, Tah. Bhiwapur, Dist. Nagpur

..VERSUS..

RESPONDENTS : 1. Shri. Narendra s/o Vasantryao
Ori. plff
(On R.A.) Raghushe, Aged-51 years, Occ.-
Cultivator,
2. Shri. Yogesh s/o Vasantryao Raghushe,
Aged-46 years, Occ.-Cultivator,
3. Sou. Pratibha w/o Sanjayrao Gandole,
Aged-43 years, Occ.-Household,
4. Smt. Bebitai wd/o Vasantryao
Raghushe, Aged-73 years, Occ.-
Household,

All R/o. Bhiwapur, Tah. Bhiwapur, Dist.
Nagpur.

Mr. R. D. Murkute, Advocate for Appellant.
Mr. Abhijit Deshpande, Advocate for the Respondent.

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

DATE : **29.01.2026**

J U D G M E N T :

1) The present appeal is preferred by the original
defendant, who has suffered a decree for possession in a suit filed

against him by the present respondents.

2) The case of the defendant is that he had entered into agreement of sale with the father of the plaintiffs, Vasantrao, on 04.04.1990 and that he had paid the entire sale consideration to him in terms of the said agreement. The suit is opposed on this ground. However, the defendant has not entered the witness box. The alleged agreement dated 04.04.1990 is also not proved.

3) The learned Trial Court has, therefore, passed a decree for removal of encroachment and possession in favour of the plaintiffs. The appeal filed by the original defendant also came to be dismissed for the same reason.

4) Notice in the present second appeal was issued vide order dated 18.03.2025 on the following substantial question of law :-

“Whether the Trial Court was right in decreeing the suit of the plaintiffs without framing the issue with regard to defence of the appellant/original defendant that he is in possession of the suit property pursuant to agreement to sell dated 04.04.1990 ?”

5) Learned Advocate Mr. Murkute vehemently argues that, in view of pleading of the defendant with respect to the

agreement of sale in his favour, it was incumbent upon the learned Trial Court to frame an issue with respect to Section 53-A of the Transfer of Property Act (for short, “the Act”). He contends that the learned Trial Court has committed a grave error in not framing the said issue and that the learned First Appellate Court has also erred in not considering the said aspect of the matter.

6) In my considered opinion, the said argument merits rejection for the simple reason that the defendant has not entered the witness box in order to prove the alleged agreement. In order to seek protection of Section 53-A of the Act, it was necessary for the defendant to prove that he had entered into agreement of sale with respect to the suit property and that he was all the while ready and willing to perform his part of the contract. It is also necessary to establish that all the conditions of the proposed sale are contained in the agreement of sale. However, since the defendant did not enter the witness box, he has miserably failed to establish his defense with respect to part performance. Perusal of the judgment by the learned Trial Court will demonstrate that the defendant also did not give any suggestion to the witnesses of the plaintiffs with respect to the said agreement.

7) In view of the above, in my considered opinion, even if an issue with respect to Section 53-A of the Act was framed by the

learned Trial Court, the same would have to be answered in favour of the plaintiffs and against the defendant. Failure to frame an issue with respect to Section 53-A of the Act has, therefore, not caused any prejudice to the defendant.

8) In view of the aforesaid, the substantial question of law framed in the appeal is answered in favour of the plaintiffs and against the defendant/appellant. Second Appeal is therefore **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..