



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

SECOND APPEAL NO.65 OF 2026

APPELLANT/
ORIGINAL
PLAINTIFF

(On R.A.)

:- Shri Prakash Tulshiram Wankhede, aged about 65 years, occupation: business, proprietor of P.K. Builders and Developers and Constructions, resident of 846, Vaishali Nagar, Nagpur – 440017.
(ON R.A.)

..VERSUS..

RESPONDENTS :-
/ORIGINAL
DEFENDANTS

(On R.A.)

- 1) Smt. Chetna Rupendra Ramteke, Aged about 60 years, occupation: housewife, resident of New Thawre Colony, Misal Layout, Nagpur.
- 2) Shri Swapnil S/o Rupendra Ramteke, aged about 42 years, occupation: business, having business in name of 'Swapnil Automobiles', Shop no.4, Plot no.14, Ward no.57, Sahyog Nagar, Nari, Nagpur.
(ON R.A.)

Mr. P.A. Abhyankar, Advocate for Appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 20/02/2026

ORAL JUDGMENT :

1. The appellant has filed a suit being Special Civil Suit No.282 of 2016 seeking a declaration that the agreement of

sale dated 12.11.2010, executed by him in favour of the respondent No.1, is an unenforceable document and cannot be acted upon since it is obtained under misrepresentation. The appellant/plaintiff has also prayed for a decree in the amount of Rs.1,65,000/- against the defendants towards occupation charges of the suit property which is subject matter of the said agreement. The respondent Nos.1 and 2 are original defendants.

2. It is not in dispute that on 12.11.2010 the plaintiff has executed a document in favour of the respondent No.1, which is titled as 'agreement of sale', with respect to the suit property, which is a shop block in a scheme developed by the plaintiff. The case of the plaintiff is that his father and husband of defendant No.1 (who is also father of defendant No.2) were good friends and that the defendant No.1 had approached him with a request to allow his son to occupy and use the suit shop for the purpose of his business. The plaintiff contends that the agreement of sale was executed in favour of the defendant No.1 at her request on a representation, that the same was required for obtaining bank loan. The plaintiff has specifically stated that

the agreement of sale was not to be acted upon and the actual transaction between the parties was one under which plaintiff allowed the defendant to occupy the suit property against payment of occupation charges. This inference can be drawn from a specific statement in the plaint that the defendants have deposited a sum of Rs.75,000/- towards advance of occupancy charges at the rate of Rs.5,000/- per month.

3. The defendants filed written statement contending that the agreement in question is, in fact, a genuine agreement for sale. The defendants have also filed a suit for specific performance against the plaintiff, which is pending. The learned trial Court decreed the suit on the ground that although the agreement is entered into with the defendant No.1, she did not enter the witness box and the defendant No.2, who is her son, had entered into witness box. The learned trial Court has referred to certain handwritten portions in the agreement which are not countersigned and has also referred to Clause 1.2, wherein, at one place, it is mentioned that, an amount of Rs.2,00,000/- was paid by the defendants to the plaintiff and while mentioning so, the amount is mentioned in the figures as

Rs.2,00,000/-, it is written in words as “three lacs”. The fact that the suit for specific performance was filed after a period of six years, in the backdrop of contention of the defendants that the sale consideration was paid within a period of 36 months, is also a fact that has weighed with the learned trial Court in granting a declaration that the agreement dated 12.11.2010 is not an enforceable document and in passing a decree for recovery of the amount of Rs.1,65,000/- towards outstanding occupancy charges in favour of the plaintiff.

4. The defendants preferred first appeal being Regular Civil Appeal No.121 of 2024, which is allowed by the learned District Judge-16, Nagpur. The learned Appellate Court has recorded that the pleadings in the plaint do not satisfy the requirements of Order VI Rule 4 of the Code of Civil Procedure. It is also observed that the observations with respect to execution of agreement recorded by the learned trial Court are not relevant, since execution of the agreement is not in dispute. The learned First Appellate Court recorded that the learned trial Court had wrongly placed the burden of proving transaction being a genuine sale transaction on the defendants, although plaintiff had set up a case contrary to the contents of the document and the burden of proving the same on

the plaintiff.

5. I have heard Mr. P.A. Abhyankar, learned Advocate for the appellant/plaintiff and I have perused the judgments delivered by the learned trial Court and learned First Appellate Court and also perused the pleadings and depositions.

6. Perusal of the plaint averments and deposition of plaintiff will demonstrate that execution of agreement of sale is not in dispute. The plaintiff, however, has come up with a case that the agreement was executed only in order to enable the defendant No.2 to obtain loan and that the possession of the suit property was delivered to the defendants on occupancy charges of Rs.5,000/- per month. The case of the plaintiff is completely demolished in his cross-examination, wherein he has admitted the endorsement made on the overleaf of the last page of the agreement, which reads as under:-

“Balance payment Rs.50,000/-, amount paid Rs.25,000/-, Rs.25,000/- balance dated 18.12.2010 at the time of sale deed.”

7. The said handwritten endorsement bears signature of the plaintiff. The said endorsement completely demolishes the case of the plaintiff that the transaction between the parties was in fact an agreement for occupation of property on payment of occupation

charges. The plaint averments do not offer any explanation in this regard. Similarly, the examination in chief of the plaintiff also does not explain the said circumstance. This clinching piece of evidence in the considered opinion of this Court, is sufficient to hold that the agreement in question is an enforceable document and the transaction between the parties is one of agreement for sale and not agreement for possession of property against payment of occupancy charges. The learned First Appellate Court has rightly appreciated the controversy in allowing the appeal. The findings recorded by the learned First Appellate Court are based on appreciation of the pleadings and evidence.

8. In the light of the reasons recorded above, no substantial question of law arises for consideration in appeal. Second Appeal is therefore **dismissed** with no order as to costs.

9. It is clarified that the aspect of readiness and willingness will be decided independently by Court by dealing with the suit for specific performance of contract filed by the defendants.

(ROHIT W. JOSHI, J.)

C.L. Dhakate