



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

SECOND APPEAL NO.66/2026

Jyoti wd/o Anupkumar Khedkar and others
...Versus...
Suresh Gunwantrao Chanekar

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

Court's or Judge's orders

Mr. Masood Shareef with Ms Neerja G. Chaubey, Advocates for appellants
Mr. Abhijit Deshpande, Advocate for respondent

CORAM : ROHIT W. JOSHI, J.
DATE : 23/02/2026

1. The present Second Appeal is preferred against judgment and decree dated 17/12/2021, passed by the learned Civil Judge, Senior Division, Wardha in Special Civil Suit No.23/2013 and judgment and decree dated 15/03/2025, passed by the learned District Judge – 4, Wardha in Regular Civil Appeal No.10/2022. The respondent is the original plaintiff. The appellants are legal representatives of original defendant. The parties will be referred to as “plaintiff and defendants” hereinafter.

2. The plaintiff had filed aforesaid suit for specific performance of contract, *inter alia* contending that the defendant had entered into an agreement of sale with him on 30/11/2010, *inter alia* agreeing to sell the suit property being Plot No.799 with structure standing thereon, situated at Gond Plot Wardha, admeasuring around 2400 sq.ft. for a consideration of Rs.17,21,000/-, out of which, a sum of

Rs.5,00,000/- is paid by the plaintiff to the defendant till the date of execution of agreement and balance amount of Rs.12,21,000/- was agreed to be paid on 30/10/2012 i.e. date stipulated for execution and registration of sale-deed.

3. The defendant opposed the suit by denying all contentions raised by the plaintiff. The defendant denied execution of agreement and receipt of part sale consideration of Rs.5,00,000/-, as stated in the agreement.

4. Based on rival pleadings, the learned Trial Court framed issues. The plaintiff entered the witness box and closed his side of evidence. By the time, suit was posted for evidence of defendant, the sole defendant expired and his legal representatives were brought on record. The defendant No.2 entered the witness box on behalf of legal heirs of defendant. The defendants also examined one Dr. Mohan Bhanudas in support of their contention that as on the date of agreement of sale deceased defendant was medically unfit and was not in a position to execute the agreement.

5. During the course of her evidence, defendant No.2 denied the signature of her father (original defendant) on the agreement of sale. Signatures on the Vakalatnama filed by the defendant in the civil suit and two sale-deeds including the sale-deed at Exh.111, under which the defendant had purchased the suit property, were confronted to her in her cross-examination. She denied the signatures of her father on the Vakalatnama as also on the sale-deed, under which her father purchased the suit property.

6. The learned Trial Court compared the signature of defendant on the agreement of sale with his signatures on

Vakalatnama, written statement and the sale-deed and arrived at conclusion that the signature on the agreement was of the defendant. The learned Trial Court has relied on Section 73 of the Evidence Act for making comparison of the signatures. The learned Trial Court thus held on comparison of signatures that the agreement of sale was signed by defendant. The learned Trial Court answered the issue of readiness and willingness in favour of the plaintiff and passed a decree for specific performance of contract in his favour.

7. Aggrieved by the aforesaid decree for specific performance, the defendants preferred aforesaid first appeal. The learned first Appellate Court disapproved the exercise of comparison of signatures by the learned Trial Court. However, the learned first Appellate Court was of the opinion that although the defendant had come up with a case of fraud by forgery of his signature on the agreement in question, the pleadings in written statement were not sufficient to make out a case of fraud. The learned first Appellate Court recorded that written statement did not satisfy the requirement of Order VI Rule 4 of the Code of Civil Procedure with respect to alleged case of fraud. In the light of such reasons, the learned first Appellate Court disbelieved the defence of defendants and confirmed the decree for specific performance, passed by the learned Trial Court. These concurrent decrees of specific performance of contract are subject matter of challenge in the present Second Appeal.

8. Mr. Shareef, learned Advocate for the appellants has vehemently argued that the plaintiff has failed to prove the agreement in question. He contends that since the execution of

agreement as also receipt of consideration is specifically disputed by the defendant, the plaintiff ought to have examined the attesting witnesses, or at least one of them to prove due execution of the agreement. Mr. Shareef further contends that the learned Courts did not notice inherent contradictions in the plaint averments and contents of the agreement with respect to payment of part sale consideration of Rs.5,00,000/-. Mr. Shareef argues that although the agreement records that the amount of Rs.5,00,000/- was paid on the date of execution of agreement, pleadings in the plaint were to the effect that amount of Rs.5,00,000/- was paid by the plaintiff to the defendant in part on four separate occasions.

9. Per contra, Mr. Abhijit Deshpande, learned Advocate for the respondent supports the findings recorded by both the learned Courts. He contends that examination of attesting witnesses is not necessary to prove the agreement. Mr. Deshpande argues that the evidence of defendants does not inspire confidence, inasmuch as the defendant's witness (respondent No.2) has denied the signature of defendant (her father) on the Vakalatnama and also on the sale-deed at Exh.111, under which the suit property is purchased by the defendant. Mr. Deshpande contends that the defendant's witness (defendant No.2) is not a witness of truth. He further contends that the signature on agreement certainly has a phonetic similarity with the signature of the defendant on the written statement, Vakalatnama, sale-deed at Exh.111 and another sale-deed at Exh.110. He contends that there is no material on record to indicate that the plaintiff was aware

about the manner in which defendant used to mark his signature and therefore, it is not possible for the plaintiff to make false signature of the defendant.

10. It cannot be disputed that there is phonetic similarity in the signature of defendant on the agreement in question and his other signatures on record, particularly signature on the registered address and sale-deed at Exh.111. In order to forge signature of any person, the person forging the signature must know the mode and manner in which the other person marks his signature. The evidence on record does not bring out the circumstances under which the plaintiff would have known about the mode and manner of signature of the defendant in order to forge the same.

11. It must also be stated that deposition of defendant's witness does not inspire confidence. She has gone to the extent of denying her father's signature on the Vakalatnama as also on the sale-deed through which the suit property was purchased by her father, the original defendant. The defendant also came up with a contention that at the relevant time, the defendant was not in a fit physical or mental condition to execute the agreement, since he was completely bedridden on account of injury suffered in a road accident. The defendant's witness stated in the cross-examination that her father met with an accident on 30/12/2007, however, the police report is not filed on record. Similarly, medical documents regarding admission in hospital, discharge card etc. are not filed. The names of Doctors treating the defendant could not be stated during the cross-examination. The learned Appellate Court while dealing with this aspect has taken into

consideration that the agreement in question is executed on 30/11/2010 i.e. after a period of around three years from the date of alleged accident. In view of the aforesaid, the learned Appellate Court rejected the contention that the defendant was not in a fit physical and mental condition to enter into agreement at the relevant time. The agreement in question is dated 30/11/2010. The contention is that the defendant met with accident in the year 2007. However, the medical evidence brought on record is with respect to physical condition of the defendant in the year 2015.

12. Both the learned Courts have taken into consideration the evidence on record to arrive at findings of fact with respect to veracity of agreement. These findings which are based on appreciation of evidence on record cannot be disturbed by reappraisal of evidence by this Court. The defendant's witness certainly does not appear to be witness of truth. The stand in the written statement and also during the cross-examination is completely evasive.

13. The contention of Mr. Shareef is that in view of express denial of the agreement, the plaintiff should have examined one attesting witness and the handwriting expert as well. At the outset, it must be stated that in order to prove an agreement, it is not necessary to examine attesting witness. In the considered opinion of this Court, the signature of defendant on the document, which admittedly has resemblance with his other signatures, coupled with evasive stand of the defendant's witness, is sufficient to uphold the finding by the learned Courts with respect to execution of the agreement by the defendant. Since the signature on agreement

admittedly resembles with undisputable signatures and in the absence of evidence with respect to the circumstances, under which the plaintiff could have come to know about the signature of defendant in order to forge the same, in the opinion of this Court, it was for the defendant or the legal representatives of defendant to examine handwriting expert, if they so desired.

14. The findings recorded by the learned Courts are pure findings of facts, based on appreciation of evidence on record. The appeal does not give rise to any substantial question of law. Second Appeal is, therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)