



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

SECOND APPEAL NO.103 OF 2025

APPELLANTS :- 1. Smt. Sheela W/o Gyaneshwar Hatwar,
(Deceased) through Legal Heirs.

1-A. Shri. Gyaneshwar S/o. Upasrao
Hatwar, Aged about 67 years,
occupation: Service,

1-B. Shri. Ashish S/o. Gyaneshwar
Hatwar, Aged about 42 years,
occupation: Service,

1-C. Shri. Amol S/o. Gyaneshwar
Hatwar, Aged about 37 years,
Occupation: Service,

All residents of Parsodi, Tehsil Umred,
Dist. Nagpur.

1-D. Smt. Priyanka W/o. Deepakrao
Gadre, Aged about 39 years,
occupation: Housewife, R/o. Sahu
Nagar, Manewada, Nagpur.

..VERSUS..

RESPONDENTS :- 1. Shri. Sunil Balaji Sadawarte, Aged
about 65 years, occupation: Retired,
R/o. Mangalwari Peth, Tehsil Umred,
District: Nagpur.

2. Shri. Dayaram Unduruji Waghmare,
Aged about 67 years, Occupation:
business, R/o. Waghmare layout,
Parsodi, Tehsil Umred, Dist. Nagpur.

Mr. U. M. Aurangabadkar, Advocate for Appellants.

CORAM : ROHIT W. JOSHI, J.

DATE : 17.02.2026

J U D G M E N T :

1) The present Second Appeal arises out of two civil suits, being Regular Civil Suit No.20 of 2012 and Regular Civil Suit No.33 of 2012. The appellants are legal representatives of original plaintiff in Regular Civil Suit No.33 of 2012 (old Special Civil Suit No.133 of 2010), which is a suit for specific performance of contract filed against the respondents, who are defendants in the said suit. Regular Civil Suit No.20 of 2012 (old Special Civil Suit No.1342 of 2010) is filed by respondent No.1 for possession. The appellant and respondent No.2 are defendants in the said suit. Both the suits came to be decided by a common judgment and decree dated 07.09.2017, passed by the learned Joint Civil Judge, Junior Division, Umrer. The learned Trial Court has passed decree for possession in Regular Civil Suit No.20 of 2012 and has dismissed the suit for specific performance, being Regular Civil Suit No.33 of 2012.

2) The appellant filed two separate appeals challenging the aforesaid judgment and decree. Regular Civil Appeal No.593 of 2017 was filed challenging decree passed in Regular Civil Suit No.33 of 2012 i.e., suit for specific performance. Regular Civil Appeal No.592 of 2017 was filed against decree in Regular Civil Suit No.20 of 2012, i.e., the suit for possession. Both these appeals came to be decided vide judgment and decree dated 14.10.2024, passed by the learned District Judge-14, Nagpur. The present Second Appeal is filed challenging the aforesaid decrees passed in suit for specific performance of contract and possession. The suit property is a piece of land admeasuring 139.40 Square Meters, bearing Plot No.23, situated in Ward No.22, Survey No.5 of Village Parsodi, Tahsil Umrer, District Nagpur.

3) It is the case of appellant and respondent No.2 jointly that they had entered into an agreement of sale with respondent No.1 on 20.12.2007, *inter alia* agreeing to purchase the suit property for a consideration of Rs.2,80,000/-.

4) Respondent No.1 contends that he had entered into agreement of sale dated 20.12.2007 with respondent No.2 and that since, respondent No.2 failed to perform his part of the contract in order to obtain sale deed of the suit property in terms of the agreement, he had issued a notice to respondent No.2 on 27.05.2009 calling upon him to execute the sale deed within a period of one month from the date of receipt of notice and that despite receiving the said notice, respondent No.2 did not come forward for completing the sale transaction. He contends that the agreement of sale between respondent Nos.1 and 2, therefore, stood terminated. Respondent No.1 contends that the original agreement dated 20.12.2007 was in custody of respondent No.2 and he had retained a photocopy of the said agreement. Respondent No.1 further contended that, appellant and respondent No.2 manipulated the agreement by incorporating name of the appellant in the agreement of sale although the appellant was not a party to the agreement of sale dated 20.12.2007. Respondent No.1 also alleged that the appellant took forcible possession of the suit property with

the help of respondent No.2 and has further constructed a temporary unauthorized structure on the suit property in order to usurp the suit property.

5) The learned Trial Court proceeded to decide both the suits by a common judgment. The learned Trial Court has recorded a finding that the agreement of sale was manipulated in order to incorporate name of the appellant in the said document as a purchaser with respondent No.2. The learned Trial Court has accordingly dismissed the suit for specific performance of contract holding that appellant was not a party to the agreement of sale and was, therefore, entitled to enforce the same. The suit for possession filed by respondent No.1 was decreed.

6) Being aggrieved by the said decrees, the appellant filed two separate appeals as aforesaid. The learned First Appellate Court has dismissed both these appeals by a common judgment, thereby confirming the decree for possession passed in favour of respondent No.1 and also the decree by which suit for specific performance filed by the appellant came to be dismissed.

7) Mr. Aurangabadkar, learned Advocate for the appellants contends that the findings recorded by both the learned Courts with respect to the agreement in question are perverse. He states that bare perusal of the agreement in question will demonstrate that the name of the appellant is mentioned therein as purchaser and that the signature of the appellant also appears on the agreement as purchaser. He contends that respondent No.1 has failed to prove its case of fraud. Mr. Aurangabadkar, also draws attention to notice dated 08.06.2009 (Exhibit 59) issued by respondent No.2 to the husband of appellant and respondent No.1 to contend that respondent No.2 has also supported the contention of appellant that the agreement in question was a joint agreement executed by him along with the appellant as purchaser in order to purchase the suit property from respondent No.1. The learned advocate contends that the findings recorded by the learned Courts with respect to due execution of the agreement are perverse and therefore the same warrant interference at the hands of this Court, even if the scope of examination of evidence in a second appeal is

limited.

8) I have perused the judgments delivered by the learned Courts alongwith pleadings and the relevant documents particularly, disputed agreement and notice dated 08.06.2009 issued by respondent No.2. Perusal of the agreement in question will reveal that the name, age and address of respondent No.2 as purchaser and respondent No.1 as vendor is mentioned in the agreement. However, the name of appellant is mentioned without mentioning her age and address. The name of the appellant appears to be inserted above the name of respondent No.2 as purchaser. The name of the appellant is mentioned above the words prospective purchaser. The finding by the learned First Appellate Court that the name of appellant No.1 is subsequently inserted appears to be correct. Perusal of the document clearly indicates that the name of the appellant as purchaser is inserted subsequently in the agreement between the title of document and name of respondent No.2, which is mentioned as purchaser in the agreement.

9) It will also be pertinent to state that in the notice dated 08.06.2009 at Exhibit 59 on which strong reliance is placed by the appellant, respondent No.2 does not state that the agreement of sale with respect to suit property was entered into by and between appellant and respondent No.2 as purchasers and respondent No.1 as vendor. It rather states that the husband of appellant was a co-purchaser. There is thus a clear contradiction in the version of the appellant and the legal notice dated 08.06.2009 issued by respondent No.2. Although the said notice is issued by respondent No.2, the appellant is placing reliance on the said document.

10) Apart from the above, no other contention was raised by the learned advocate for the appellant. The findings recorded by both the learned Courts are pure findings of fact based on appreciation of evidence on record. Having perused the agreement in question, I am also in agreement with the view of the learned Courts that the name of appellant was subsequently inserted in the agreement of sale, which was executed between respondent Nos.1 and 2.

11) In view of the above, concurrent decrees passed by the learned Courts dismissing the suit for specific performance do not call for any interference.

12) The appellant is in possession of the suit property. She claims to be in possession on the basis of agreement of sale. The agreement of sale is an unregistered document. Therefore, protection of possession cannot be claimed under Section 53-A of Transfer of Property Act, 1882. Moreover, she has failed to establish the agreement on the basis of which she claims to be in lawful possession of the suit property. The agreement is disbelieved by both the learned Courts and this Court has also concurred with a view expressed by the learned Courts. Decree dismissing the suit for specific performance is confirmed by this Court. The decree for possession, therefore deserves to be upheld.

13) Second Appeal is, therefore, **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)