



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

SECOND APPEAL NO.142 OF 2026

APPELLANT
Ori. Plaintiff

:- Satish S/o Jagannath Chaware, aged about:
56 years, occ: Agriculturist, R/o Kenwad,
Tq. Risod, Dist. Washim.

..VERSUS..

RESPONDENTS :-
Ori. Def.No.1

1) Deepak S/o. Digambar Adhao, aged about:
45 years, occ: Agriculturist, R/o Malegaon,
Tq. Malegaon, Dist. Wshim..

Ori. Def. No.2

2) Bhagwan S/o. Baliram Raut, Aged about:
59 years, occ: Agriculturist, R/o. Rithad,
Tq. Risod, Dist. Washim.

Ori. Def.No.3

3) Avinash S/o. Shankar Katekar, aged about
35 years, Occ: Service R/o. Near Hanuman
Temple, Malegaon, Dist. Washim

Ms Chahal D. Lilhare, Adv. h/f Mr. S.S. Dhengale, Adv. for Appellant.

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

DATE : **08/04/2026**

JUDGMENT :

1. The present appeal arises out of judgment and decree dated 25.08.2016 passed by the learned Civil Judge Junior Division, Malegaon, in Regular Civil Suit No.33 of 2012 (Old Special Civil

Suit No.44 of 2008) and judgment and decree dated 10.12.2025 passed by the learned Principal District Judge, Washim, in Regular Civil Appeal No.58 of 2016. The appellant is the original plaintiff and respondents are the original defendants.

2. The appellant/plaintiff had filed a suit for specific performance of contract against the defendants. The plaintiff had entered into an agreement of sale dated 02.04.2007 with the defendant No.1, *inter alia* agreeing to purchase the suit property, which is an agricultural land admeasuring 1.48 H.R., for a consideration of Rs.4,85,000/-, out of which a sum of Rs.5,000/- was paid to the defendant No.1/vendor towards earnest money. The sale deed was to be executed on or before 10.09.2007.

3. The case of the plaintiff is that although he was repeatedly calling upon the defendants to execute the sale deed in terms of the agreement, the defendant avoided to execute the same, as a consequence of which, the plaintiff issued notice for specific performance of contract and thereafter filed a suit for specific performance on 07.08.2008. The defendants came up with a defence that the agreement was in fact a cover for loan transaction. It is the case of the defendants that the property was never intended to be sold.

4. Both the learned Courts have concurrently held that the agreement in question is duly proved and that the defendants failed to establish the defence of the transaction being a loan transaction. However, the relief of specific performance is refused by both the learned Courts on the ground that plaintiff failed to prove readiness and willingness. In this regard, the plaintiff stated in the evidence that he is an agriculturist owning around 10 acres of agricultural land. The plaintiff has admitted that he has no other source of income.

5. The case of the plaintiff is that at the relevant time, he had arranged funds to the tune of Rs.5,00,000/-, however, since the defendant No.1 was not executing the sale deed, the said amount was given by the plaintiff to his brother for purchasing a plot in the village. Perusal of the evidence will demonstrate that the plaintiff did not produce any documentary evidence on record in the form of bank statements etc., to prove availability of funds. The contention that amount of Rs.5,00,000/- was given to his brother for purchasing the plot is also not proved, inasmuch as the sale deed of the plot purchased by his brother is not filed on record. The plaintiff has also not examined his brother to prove the contention that amount of Rs.5,00,000/- was given to the brother for purchasing

another property.

6. In view of the aforesaid, the concurrent judgments and decrees by the learned Courts refusing to grant specific performance on the ground that plaintiff has failed to prove readiness and willingness, cannot be faulted. The findings are based on appreciation of evidence which cannot be re-appreciated in a second appeal.

7. The learned advocate for the appellants has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Basavaraj ..vs.. Padmavathi and another*¹, to contend that adverse inference for not producing documentary evidence to establish readiness and willingness can be drawn only in cases where the defendant issues a notice for production of document and plaintiff fails to produce the same. She contends that in the present case, the defendant has not issued any such notice and therefore, adverse inference could not be drawn. In the said case, suit for specific performance was decreed by the learned trial Court after recording finding on the aspect of readiness and willingness in favour of the plaintiff. In that case, out of total consideration of Rs.12,74,000/-, a sum of Rs.3,00,000/- was already paid on the date of execution of agreement i.e. on 13.03.2007. The plaintiff had issued notice for

¹ (2023) 4 SCC 239

specific performance on 20.11.2007, in response to which the defendant had denied the agreement itself. The balance sale consideration was Rs.9,74,000/-. Thus, almost 1/4th amount of the agreed sale consideration was paid on the date of agreement. The evidence suggested eagerness of the plaintiff to perform his part of the contract. In this context, the Hon'ble Supreme Court has observed that adverse inference could not be drawn only because documentary evidence with availability of funds was not produced on record.

8. In the present case, as against agreed sale consideration of Rs.4,85,000/-, the plaintiff has paid earnest amount of Rs.5,000/- only. The plaintiff is an agriculturist. His contention was that he was ready with amount of Rs.5,00,000/- in order to complete the sale transaction. However, he has come up with a specific case that the said amount was given to his brother for purchasing another property. The brother as required above, is not examined as witness and the alleged sale deed is also not produced on record. The sale deed was to be executed on or before 10.09.2007. However, the legal notice for specific performance is issued on 05.06.2008 i.e. after a period of nine months from the date stipulated for the sale deed.

9. It is well settled that in suit for specific performance of contract, the plaintiff must prove continuous readiness and willingness, even if the same is not questioned by the defendant. It is also well settled that the word readiness implies capacity of the plaintiff to discharge his obligations, particularly financial obligations to make payment of sale consideration in terms of the agreement and willingness implies desire to complete the transaction. Reliance in this regard can be safely placed on the judgment of the Hon'ble Supreme Court in the case of *Ritu Saxena ..vs.. J.S. Grover and another*². The settled legal principle that in order to establish readiness, the plaintiff must show availability of funds or capacity to generate the funds is reiterated in the said decisions. In the case of *Ritu Saxena* (supra), the agreement of sale was for a consideration of Rs.50,00,000/- out of which a sum of Rs.1,00,000/- was paid towards the earnest money. The plaintiff came up with a case that gross annual income of plaintiff and her husband was approximately Rs.80,00,000/-. However, documentary evidence in this regard was not produced. The Hon'ble Supreme Court held that in the absence of proper documentary evidence such as bank account statement income tax return such self serving statement with respect to availability of

funds are not sufficient to establish financial capacity i.e. readiness. The question which falls for consideration in every suit for specific performance of contract is as to whether readiness and willingness is duly proved by the plaintiff. The burden of proving is on the plaintiff. The plaintiff must bring cogent evidence on record to prove the same. In the case at hand, out of total sale consideration of Rs.4,85,000/-, the plaintiff had merely paid a sum of Rs.5000/- and as such, it was absolutely necessary for plaintiff to bring evidence on record to establish availability of funds. Plaintiff has miserably failed to bring evidence in this regard.

10. In view of the aforesaid, the view taken by the learned Courts concurrently is a possible view. This Court cannot substitute findings of fact recorded by the learned Courts with its own findings, having regard to the limited scope in the second appeal. Second appeal is therefore **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate