



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

SECOND APPEAL NO.312/2018

APPELLANTS:

1. Vijay Alwin Masih s/o Prem Masih
Aged about 55 years, Occ. : Business.
2. Mrs. Merry w/o Vijay Masih,
Aged about 48 years, Occ. : Household.

Both Resident of Aasma Enclave,
Jaffar Nagar, Nagpur.

...VERSUS...

RESPONDENT:

Shri Safdar Hussain s/o Saheb Khan,
aged about 49 years, Occ. : Business,
R/o 401, Darbari Apartment, Nelson Square,
(Mental Hospital Square), Nagpur.

Mr. A.V. Bobde, Ms S.A. Jadhav and Mr. R.R. Rajkarne, Advocates for appellants
Mr. A.N. Ansari, Advocate for respondent

WITH

CROSS-OBJECTION NO.19/2026

APPELLANTS:

(Ori. Defendant
No.1) (On R.A.)

(Ori. Defendant
No.2) (On R.A.)

1. VIJAY ALWIN MASI H S/O PREM MASI H,
Aged about 55 years, Occ. : Business.
2. MRS. MERRY W/O VIJAY MASI H
Aged about 48 years, Occ. : Household.

Both Resident of Aasma Enclave, Jaffar Nagar,
Nagpur.

...VERSUS...

RESPONDENT: SHRI SAFDAR HUSSAIN S/O SAHEB KHAN
CROSS- aged about 49 years, Occ. : Business,
OBJECTOR R/o 401, Darbari Apartment, Nelson Square,
(Ori. Plaintiff) (Mental Hospital Square), Nagpur.
(On R.A.)

Mr. A.N. Ansari, Advocate for cross-objector/plaintiff
Mr. A.V. Bobde, Ms S.A. Jadhav and Mr. R.R. Rajkarne, Advocates for
respondents/original defendants

CORAM : ROHIT W. JOSHI, J.
DATE : 08/04/2026

ORAL JUDGMENT :

1. The present appeal is filed against the judgment and decree dated 27/02/2018, passed by the learned Ad hoc District Judge, Nagpur in Regular Civil Appeal No.108/2017, whereby the learned Ad hoc District Judge has dismissed the appeal and confirmed the judgment and decree dated 16/06/2016, passed by the Civil Judge Senior Division, Nagpur in Special Civil Suit No.791/2011 by modifying the decree by deleting the relief of possession of the suit property in favour of the plaintiff.

2. The present Second Appeal arises out of a suit for specific performance of contract. The appellants are original defendants. Concurrent decrees for specific performance of contract have been passed against the appellants/original defendants. Vide order dated

06/02/2025, the appeal has been admitted on the following substantial question of law :-

“In the light of the fact that the requisite permission having been refused by the NIT on 04.09.2008, whether the plaintiff on the basis of the subsequent permission granted on 12.01.2009 is entitled for the decree of specific performance in the light of deposition of PW-2 at Exh.67?”

3. The parties entered into an agreement of sale dated 08/07/2008, whereby the plaintiff agreed to purchase the suit property for a consideration of Rs.35,77,762/-, against which a sum of Rs.5,00,000/- was paid by the plaintiff to the defendant. The defendant disputed the agreement on the ground that it was not signed by him but by a person, who was not lawfully authorized to sign the agreement on his behalf. The learned Courts have concurrently rejected the said defence. The appeal does not involve the said question.

4. The suit property comprises of a plot, situated in an unauthorized layout. The parties had agreed that the plot would be sanctioned and the competent planning authority, namely, the Nagpur Improvement Trust (NIT) would issue a release letter after sanction of the plot and thereafter sale-deed will be executed. It is not in dispute that initially the NIT had refused to grant release letter vide communication dated 04/09/2008. The said document is at Exh. 57.

Thereafter, the NIT issued a release letter dated 12/01/2009 (Exh.42). The contention of the defendants was that upon refusal on the part of NIT to issue release letter, the agreement *ispo facto* stood terminated and as such, the agreement was not capable of being specifically performed. This is the substantial question law framed in the present appeal.

5. It will be pertinent to state that although the learned first Appellate Court held in favour of the respondent/plaintiff with respect to specific performance of the contract, nonetheless the learned first Appellate Court found that the respondent/plaintiff had not made a prayer for possession and therefore, the learned Trial Court had erred in granting decree for possession. The respondent/original plaintiff has filed a cross-objection, contending that decree for specific performance by itself includes the prayer for possession and that in a suit for specific performance of contract, there is no need to make a separate prayer for possession. The cross-objection was filed along with application for condonation of delay, which is allowed by this Court vide order dated 27/02/2026. Vide order dated 11/03/2026, following substantial questions of law came to be framed in the cross-objection :-

“(i) Whether a separate prayer for possession is required to be made in a suit for specific performance of contract, when the vendor is in possession of the suit property and is in a position to deliver the possession to the

purchaser ?

(ii) Whether a decree for specific performance of contract by implication includes also a decree for delivery of possession ?”

6. Mr. Bobde, learned Advocate for the appellants contends that the issuance of release letter upon regularization of the plot under the provisions of the Maharashtra Gunthewari Developments (Regularisation Upgradation and Control) Act, 2001 (hereinafter referred to as “Gunthewri Act”) is required to be done by passing an order. He contends that the rejection of application for regularization of plot and issuance of release letter is in fact an order passed by the competent authority under the Gunthewari Act. The learned Advocate further contends that there is no provision under the Gunthewari Act, enabling the authority to review its decision and as such, the subsequent order, issuing release letter is *non est*. The learned Advocate contends that upon refusal on the part of NIT to grant release letter, the agreement stood terminated and as such, there was no question of granting decree for specific performance of contract.

7. Per contra, Mr. Ansari, learned Advocate for the respondent/plaintiff contends that issuance of release letter by NIT is not in dispute. He further contends that once the release letter is issued, the agreement was required to be honoured by the defendants. The learned Advocate contends that the decree for specific performance of

contract, concurrently granted by both the learned Courts, cannot be set aside on the ground that subsequent release letter could not have been issued. He further contends that the release letter is never challenged by the appellants/defendants.

8. With respect to the cross-objection, the learned Advocate for the respondent/plaintiff contends that the learned first Appellate Court committed serious error in not maintaining the decree for possession. His contention is that in a suit for specific performance of contract, there is no need to make a separate prayer for possession. Learned Advocate places reliance on the following authorities in support of his contention.

(i) (1982) 1 SCC 525 (Babu Lal Vs. Hazari Lal Kishori Lal).

(ii) 2008 (5) Mh.L.J. 633 (Malini V. Parab @ Prabhu Vs. Prafulla Kumar R. Deshpande).

(iii) 2024 SCC OnLine SC 3584 (Rohit Kochhar Vs. Vipul Infrastructure Developers Ltd. and others).

9. Per contra, Mr. Bobde, learned Advocate for the appellants/defendants justifies the decree by the learned First Appellate Court to the extent to which decree for possession is refused. The learned Advocate contends that to grant a decree for possession in a suit for specific performance of contract, in the absence of any specific

prayer, is a matter of discretion, which is rightly exercised by the learned first Appellate Court in favour of the appellants/defendants.

Substantial Question of Law in Appeal :-

“In the light of the fact that the requisite permission having been refused by the NIT on 05.09.2008, whether the plaintiff on the basis of the subsequent permission granted on 12.01.2009 is entitled for the decree of specific performance in the light of deposition of PW-2 at Exh.67?”

10. As noted above, the contention of Mr. Bobde, with respect to release letter dated 12/01/2009 is that the same is a nullity in the eyes of law. To make good his contention, learned Advocate draws attention to the earlier order of rejection of application for regularization of the suit plot dated 04/09/2008. He contends that earlier application was rejected on two counts, namely, the plot was affected by Development Plan (D.P) Reservation of 36 meters wide ring road and the case of regularization did not fit in the scope of provisions of Gunthewari Act. The learned Advocate contends that the subsequent release letter dated 12/01/2009 is in fact in the nature of review of the earlier rejection dated 04/09/2008. It is argued that since the Act does not contain any provision for review, subsequent release letter, issued after rejection of prior application is a nullity. Drawing attention to the initial rejection, the learned Advocate contends that the plaintiff has not

proved either that D.P. Reservation is removed or that the application satisfied the parameters of the Gunthewari Act. The learned Advocate also draws attention to cross-examination of NIT witness, who has stated that once application for regularization is rejected, it cannot be reconsidered.

11. It will be pertinent to state that the defendant has not challenged the release letter, issued by NIT, granting regularization of the suit plot. In the absence of any challenge to the release letter, the contentions, advanced by the appellants, cannot be taken into consideration.

12. The contention with respect to review is also liable to be rejected. The contention that review is a creation of Statute and unless the Statute enables an authority to exercise power of review, the same cannot be exercised, is applicable to judicial or quasi judicial orders. The said legal principle cannot be made applicable to administrative decisions/acts. The decision to regularize an unauthorized plot is an administrative decision. The power to grant regularization is not a judicial or quasi judicial power. This is an administrative power vested with the Planning Authority, which can be altered, if the facts and circumstances so warrant. The admission of the witness from NIT that once an application for regularization is rejected, it cannot be reconsidered, is not very crucial, since it is not an admission pertaining

to any factual aspect. In the considered opinion of this Court, the rejection of earlier application for granting regularization will not prohibit the NIT from reconsidering the application and granting regularization to the suit plot, which was an unauthorized plot.

13. It needs to be stated that the defendants have not come up with a positive case that the plot continued to be affected by D.P. Reservation. It will also be pertinent to state that the defendants have neither pleaded nor brought any evidence on record to establish that the suit plot was not eligible for being regularized. The only contention raised is that rejection of earlier application will prohibit NIT from reconsidering the question of granting regularization. The said contention, as recorded above, cannot be accepted having regard to the nature of power.

14. The contention of Mr. Bobde is that the plaintiff should have proved that the reservation for road was deleted and that due to change in circumstances, the plot was eligible for regularization after application for regularization was rejected.

15. I am afraid, the said contention cannot be accepted. It was for the defendants to challenge the regularization letter, issued by NIT and to bring material on record to prove that regularization is illegal. The defendants have failed to do so.

16. It must also be stated that jurisdiction of a Civil Court to consider correctness of the order, granting regularization by issuance of release letter, is also barred. Vide *judgment dated 26/03/2026* delivered by this Court in *Writ Petition No.8029/2024 (Civil Appellate Jurisdiction at Bombay)*, it is held that challenge to decision taken by the Planning Authority under Gunthewari Act cannot be raised before the Civil Court, in view of bar under Section 18 of the said Act.

17. The substantial question of law framed in the appeal is, therefore, required to be answered in favour of respondent/plaintiff and against the appellants/defendants.

Substantial Questions of Law in Cross-Objection :-

(i) *Whether a separate prayer for possession is required to be made in a suit for specific performance of contract, when the vendor is in possession of the suit property and is in a position to deliver the possession to the purchaser ?*

(ii) *Whether a decree for specific performance of contract by implication includes also a decree for delivery of possession ?*

18. The Hon'ble Supreme Court in the case of *Adcon Electronics Pvt. Ltd Vs. Daulat*, reported in *2001 (4) Mh.L.J. 469* held that relief of possession cannot be granted in a suit for specific performance in the absence of any specific prayer for the said relief. The

said observation is made having regard to Section 22 of the Specific Relief Act. The Hon'ble Supreme Court was dealing with territorial jurisdiction of a Court, dealing with a suit for specific performance of contract.

19. However, in the case of ***Babu Lal*** (supra), the Hon'ble Supreme court has held that it is not always necessary for plaintiff in a suit for specific performance of contract to incorporate a prayer for possession. It is held that the relief of possession is implicit in a suit for specific performance when the defendant himself is in possession of the property. The Hon'ble Supreme Court has referred to Section 28 (3) of the Specific Relief Act and Section 55 of the Transfer of Property Act and has held that it is an obligation of the seller to deliver possession of the property sold by him to the purchaser. Relevant observations of the Hon'ble Supreme Court in the case of ***Babu Lal*** (supra) are reproduced herein below for ready reference :-

"13. The expression in sub-section (1) of Section 22 in an appropriate case is very significant. The plaintiff may ask for the relief of possession or partition or separate possession "in an appropriate case". As pointed out earlier, in view of Order 2 Rule 2 of the Code of Civil Procedure, some doubt was entertained whether the relief for specific performance and partition and possession could be combined in one suit; one view being that the cause of action for claiming relief for partition and possession could accrue to the plaintiff only

after he acquired title to the property on the execution of a sale deed in his favour and since the relief for specific performance of the contract for sale was not based on the same cause of action as the relief for partition and possession, the two reliefs could not be combined in one suit. Similarly, a case may be visualised where after the contract between the plaintiff and the defendant the property passed in possession of a third person. A mere relief for specific performance of the contract of sale may not entitle the plaintiff to obtain possession as against the party in actual possession of the property. As against him, a decree for possession must be specifically claimed or such a person is not bound by the contract sought to be enforced. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely he is bound not only to execute the sale deed but also to put the property in possession of the decree-holder. This is in consonance with the provisions of Section 55(1) of the Transfer of Property Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits.

14. There may be circumstances in which a relief for possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession viz. where the property agreed to be conveyed is jointly held by the defendant with other persons. In such a case the plaintiff in order to obtain complete and effective relief must claim partition of the property and possession

over the share of the defendant. It is in such cases that a relief for possession must be specifically pleaded.

26. Sub section (3) of Section 28 clearly contemplates that if the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree, the court may on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to. Clause (b) of sub-section (3) of Section 28 contemplates the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease. Sub-section (4) of Section 28 bars the filing of a separate suit for any relief which may be claimed under this section.”

20. It will also be appropriate to refer to judgment in the case of ***Rohit Kochhar*** (supra). The Hon’ble Supreme Court has dealt with its earlier judgments in the case of ***Babu Lal*** (supra) and ***Adcon Electronics*** (supra). While dealing with the aspect as to whether a separate prayer for possession is always required to be made in the suit for specific performance of contract or as to whether relief of possession must follow the decree for specific performance, even if, separate prayer for possession is not made, the Hon’ble Supreme Court concurs with the view taken in ***Babu Lal*** (supra). ***Rohit Kochhar*** (supra) while dealing with ***Adcon Electronics*** (supra) finds that before commencement of Specific Relief Act, 1963, there was divergence of legal opinion as to

whether a decree for possession could be granted in a suit for specific performance. Some Courts held that right to possession is acquired only after execution of sale-deed and therefore, cause of action for claiming possession was a distinct cause of action, which could not be agitated in a suit for specific performance. The other view was that delivery of possession was necessary to complete the sale transaction. The Hon'ble Supreme Court has found that *Adcon Electronics* (supra) did not take into consideration the change in law after enactment of Specific Relief Act, which is properly taken into consideration by *Babu Lal* (supra).

21. *Adcon Electronics* (supra) and *Babu Lal* (supra) were noticed by this Court in the case of *Kisan s/o Shripat Patil and another Vs. Ragho s/o Vedu Pastil, Patil*, reported in *2007 (4) Mh.L.J. 311*. Dealing with two judgments, this Court recorded that *Adcon Electronics* (supra) did not notice the view taken in the earlier case of *Babu Lal* (supra). This Court further expressed that in case of two divergent views by the Hon'ble Supreme Court, it is not necessary that latter judgment must be followed and that the High Court must evaluate the judgments and follow the view, which is better view in its consideration. This Court, thereafter, held that the view taken in *Babu Lal* (supra) was in accordance with law and accordingly, followed the same. This Court held that relief of possession could be granted even in the absence of

prayer for said relief, if the plaintiff was found entitled to a decree for specific performance of contract.

22. In view of the judgment in the case of *Babu Lal* (supra), *Rohit Kochhar* (supra) and *Kisan Shripat Patil* (supra), I am of the considered opinion that the prayer for specific performance in the present case included the prayer for delivery of possession. The defendant/vendor is in possession of the suit property and as such, there is no need to make a separate prayer for delivery of possession. Learned Trial Court has rightly granted decree for delivery of possession, although there is no separate prayer for possession. The learned first Appellate Court has erred in law in holding that decree for possession could not be passed in the absence of specific prayer in that regard. The learned first Appellate Court has erred in law in modifying decree passed by the learned Trial Court.

23. The learned Trial Court has rightly passed a decree, directing the defendants to place the plaintiff in possession of the suit property, while decreeing the suit for specific performance. The learned first Appellate Court has clearly erred in modifying the decree by deleting the relief of possession, granted by the learned Trial Court. The substantial questions of law in Cross-Objection deserve to be answered in favour of the cross-objector/plaintiff and against the respondents in cross-objection, who are original defendants.

24. In view of the aforesaid, Second Appeal deserves to be dismissed and Cross-Objection deserves to be allowed.

25. The plaintiff had deposited balance sale consideration with the learned Trial Court, as per the decree passed by the learned Trial Court. However, in view of further litigation, the said amount was withdrawn with the permission of Court. Period of around 18 years has lapsed since the date of agreement. Likewise, decree for specific performance was passed around 10 years before. In such circumstances, in order to balance the equities, it was deemed appropriate that the plaintiff should make additional payment to the defendants over and above the agreed sale consideration.

26. The learned Advocate for the plaintiff/cross-objector, on instructions, made a statement that amount of Rs.10,00,000/- could be paid for balancing equities.

27. Having regard to the fact that the decree for specific performance was passed by the learned Trial Court on 16/06/2016 and a period around ten years has passed since then, in the considered opinion of this Court, amount of Rs.15,00,000/- must be directed to be paid by the plaintiff, in addition to the agreed sale consideration to balance equities.

28. In view of the aforesaid, following order is passed :-

(i) Second Appeal No.312/2018 stands dismissed with no order as to costs.

(ii) Cross-Objection No.19/2026 is allowed by quashing and setting aside the judgment and decree dated 27/02/2018, passed by the learned Ad hoc District Judge, Nagpur in Regular Civil Appeal No.108/2017 to the extent to which decree for delivery of possession is set aside by the learned first Appellate Court and the judgment and decree dated 16/06/2016 passed by the learned Civil Judge Senior Division, Nagpur in Special Civil Suit No.791/2011 is confirmed, on the condition that in addition to the agreed sale consideration, the plaintiff/cross-objector shall pay an amount of Rs.15,00,000/- to the defendants towards specific performance of contract. The amount shall be deposited with the learned Trial Court on or before 31/05/2026.

(iii) No order as to costs.

(ROHIT W. JOSHI, J.)