

MHST020018882017



Received on : 11.12.2017.

Registered on : 01.01.2018.

Decided on : 20.07.2026.

Duration : 08Y. 06M. 19Ds.

**IN THE COURT OF 9th JOINT CIVIL JUDGE SENIOR DIVISION AT
SATARA.**

(Before Shri. Akash Baburao Redkar)

Regular Civil Suit No. - 02/2018.

Exh. No. - 74.

Pradeep Prakash Salunkhe.

Age - 46 Yrs. Occu. - Agri.

R/a. Nagthane.

Taluka and District Satara.

... Plaintiff.

v.

Subhash Shivram Bhosale.

Age - 62 Yrs. Occu. - Agri.

R/a. Punarvasit Aashte, Post Nagthane.

Taluka and District Satara.

... Defendant.

Appearance -

Advocate for the plaintiff - Shri. V. B. Yadav.

Advocate for the defendant - Shri. R. S. Pange.

Suit for specific performance of contract.

- J U D G M E N T -
(Delivered on - 20.07.2026)

Plaintiff's suit -

Property situated at village Nagthane Taluka District Satara bearing Gat no. 264 area admeasuring 0-42-0 (HR), pot kharaba 0-20-0 (HR) out of 0-21-0 (HR) bounded as follows -

Towards East - Landed property of Laxman Sakharam Nalawade
Towards West - Landed property of Laxman Khashaba Nalawade
Towards North - Landed property of Navnath Yashwant Nalawade
Towards South - Road

(Hereinafter referred as 'suit property').

Brief Facts -

2. The suit property was allotted to the defendant under the rehabilitation scheme of the Urmodi Dam Project. In 2008, the defendant was in need of money and decided to sell the suit property to the plaintiff for a consideration of Rs. 95,000/- (Rs. Ninety Five Thousand only). On 31.05.2008, they executed an agreement to sell. The plaintiff paid Rs. 30,000/- (Rs. Thirty Thousand only) as earnest money and agreed to pay the remaining Rs. 65,000/- (Rs. Sixty Five Thousand only) at the time of executing the sale deed. However, since the defendant required money for his legal necessities, the plaintiff paid him the balance amount of Rs.65,000/- (Rs. Sixty Five Thousand only). The defendant then delivered possession of the suit property to the plaintiff. The plaintiff was ready and willing to perform his part of the contract and requested the defendant to execute a power of attorney in his favour. The defendant, however, did not cooperate in obtaining the necessary government permission. On 19.06.2017, a public notice was published in the daily *Pudhari* regarding alienation of the suit property. The plaintiff objected to this alienation by issuing a notice and asked the defendant to execute the sale deed. The defendant refused, which led to the filing of this suit.

3. The defendant appeared and filed his written statement (Exh. 15). He contended that his joint family's ancestral property had been acquired by the Government under the Urmodi Dam Project,

and the suit property was allotted to him in lieu thereof. Hence, the suit property was joint family property, not partitioned, and he had no right to sell it. He further stated that the plaintiff had not obtained the requisite government permission and that he himself remained in possession of the suit property, which was his only source of livelihood. He prayed for dismissal of the suit.

4. Considering the rival pleadings of the parties, my predecessor has framed issue vide Exh.43. I have recorded my findings against each issue for the reasons discussed hereinafter.

Sr. No.	ISSUES	FINDINGS
1.	Whether the defendant has agreed to sell the suit land to the plaintiff for Rs. 95,000/- by executing an agreement for sale dated 31.05.2008 ?	Yes
2.	Whether the plaintiff has paid Rs. 30,000/- to the defendant as earnest money at the time of execution of the agreement for sale?	Yes
3.	Whether the plaintiff is ready and willing to perform his part of the agreement for sale?	No
4.	Whether the plaintiff proves that he is in possession of suit property?	No
5.	Whether the defendant proves that the suit property is ancestral and joint family property?	Yes
6.	Whether the defendant proves that he is in possession of the suit property?	Yes

- | | | |
|----|---|--|
| 7. | Whether necessary permission is required to the said transaction? | Yes |
| 8. | Whether the plaintiff is entitled to relief sought? If so, what ? | Not entitle for specific performance.
Entitled for refund of earnest amount with interest |
| 9. | What order ? | Suit is partly decreed with costs. |

5. The plaintiff examined himself vide Exh.40. He examined Dhanaji Dattatray Jadhav (PW2) attesting witness vide Exh. 63. The plaintiff closed his evidence by filing pursis vide Exh. 71.

6. Defendant did not examine himself and closed his evidence by filing pursis vide Exh. 72.

7. **Plaintiff relied on following documents-**

01. Agreement to sale vide Exh. 52.
02. Public notice vide Exh. 53.
03. Reply to public notice vide Exh. 54.
04. Return envelop vide Exh.55.
05. Reply to notice issued by the plaintiff vide Exh.56.

8. Heard both sides.

REASONS

Issues No.1 and 2 -

(Agreement between the parties and payment of earnest amount)

9. The plaintiff led his oral evidence vide exh. 40. He deposed about execution of an agreement to sell (Exh. 52). On 31.05.2008, the plaintiff and the defendant executed an agreement to sell the suit property for consideration of Rs. 95,000/- (Rs. Ninty Five Thousand Only). The plaintiff paid Rs. 30,000/- (Rupees Thirty Thousand Only) as earnest money, and the remaining amount was to be paid at the time of executing the sale deed. The plaintiff produced an agreement to sell vide Exh. 52. Dhanaji (PW2) proved the execution of the agreement to sell between the plaintiff and the defendant. Therefore, the plaintiff successfully proved the execution of the agreement and the payment of earnest money. Hence, answered issue no. 1 and 2 in the affirmative.

Issue no. 5 -

(Ancestral and joint family property of defendant)

10. The defendant stated that the suit property is ancestral and belongs to the joint family. The plaintiff admitted this fact during his cross-examination. During cross-examination, the plaintiff admitted that the defendant's ancestral land was acquired by the Government for the Urmodi Dam Project. He further admitted that the suit property was allotted to the defendant under the rehabilitation scheme. He also admitted that the defendant has no other source of livelihood except farming. Moreover, the agreement to sell (Exh.52) contains references to the ancestral property. Therefore, the defendant proved that the suit property is ancestral and joint family property. Hence, answered issue no.5 in the affirmative.

Issue no. 4 and 6 -

(Possession)

11. The plaintiff pleaded that he was in possession of the suit property. The defendant did not deliver possession of the suit

property to the plaintiff under the agreement to sell (Exh. 52). The plaintiff admitted that he had no evidence to prove his possession. The plaintiff further admitted that after 2012, the defendant took a loan of Rs. 4,50,000/- (Rs. Four Lakh Fifty Thousand Only). An encumbrance entry was recorded in the 7/12 extract of the suit property. Considering the above evidence, the plaintiff failed to prove his possession over the suit property. On the Contrary the defendant proved his possession over suit property. Hence, answered issue no. 4 in the negative and issue no. 6 in the affirmative.

Issue no.7 -
(Permission for sale deed)

12. Land allotted under rehabilitation schemes is granted to ensure the livelihood and resettlement of project-affected persons (PAPs). Because this land is provided as a special welfare measure rather than as unrestricted private property, the government imposes strict conditions to prevent speculative sales and to ensure the land continues to serve its intended purpose under the Maharashtra Project Affected Persons Rehabilitation Act, 1999). Therefore, permission of Government is necessary before sale deed. Hence, answered issue no. 7 in the affirmative.

Issue no.3 -
(Ready and willingness)

13. To ascertain the readiness and willingness of plaintiff, it is proper to take the recourse to section 16 (c) of the Specific Relief Act. It states as follows;-

- c) “who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than

terms the performance of which has been prevented or waived by the defendant.”

Explanation.-- For the purposes of clause(c),--

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

14. The plaintiff executed an agreement with the defendant and paid him Rs.30,000/- (Rs. Thirty Thousand Only) in pursuance to contract. The remaining amount was to be paid at the time of executing the sale deed. The plaintiff undertook the responsibility of obtaining the requisite permission but did not make any attempt to do so. The plaintiff stated that the defendant refused to cooperate in obtaining permission. However, the plaintiff neither mentioned the date of refusal nor issued any notice to the defendant. The plaintiff instituted this suit in 2018, i.e., after almost 10 years. Such delay defeats the cause of action. The delay is unreasonable and not explained by the plaintiff.

15. During these 10 years, property prices have increased. As per section 16 of specific relief act specific performance of contract can be refused where the plaintiff become incapable of performing their part of the contract, Violates any essential term of the contract, Fails to prove that they have been "ready and willing" to perform their part of the contract from the date of the agreement until the date of the suit.

16. Learned advocate for the defendant relied on **Raghunath Fulaji Jadhav and anr. vs. Rajendra Dinkarrao Patil and Ors. 2007(3) ALLMR 265**, Honble Bombay High Court held that Court should take care to see that it is not used as an instrument of oppression to give an unfair advantage to plaintiff.

17. Learned advocate for the defendant relied on **Central Bank of India Staff Co-Op. Building Society Ltd. Vijayawada vs. Dulipalla Ramchandra Koteswara Rao, AIR 2004 AP 18** Honble Andhra Pradesh High Court held that the non pursuing the matter for 19 years, non delivery of possession of land of permission by the Urban land ceiling authorities is a clear indication that the plaintiff society abandoned its claim. The plaintiff remained silent for unduly long period. Therefore, it amount to abandoning the agreements. The suit is hit by the Doctrine of Frustration and the plaintiff is not entitled to specific performance.

18. The plaintiff did not obtain the required permission. Performance of the contract would cause hardship to the defendant since the suit property is ancestral. Whereas non-performance would cause no such hardship to the plaintiff. Hence, the plaintiff failed to prove his continuous readiness and willingness to perform his part of the contract. Hence, answered issue no. 3 in the negative.

Issues no. 8 and 9 -
(Entitled to relief and what order)

19. The plaintiff failed to prove his readiness and willingness to perform his part of the contract. Hence, he is not entitled to the relief of specific performance.

20. The plaintiff proved the execution of the agreement to sell (Exh. 52). The plaintiff paid Rs. 30,000/- (Rupees Thirty Thousand Only) to the defendant, and the defendant utilized this

amount. It is the duty of the defendant to return the said amount with interest. The agreement to sell (Exh. 52) is commercial in nature. Nationalised banks charge 9% interest on loan advances. Hence, the defendant shall pay Rs. 30,000/- with interest at the rate of 9% per annum. Therefore, the plaintiff is entitled to recover his earnest money with interest. The Suit is partly decreed with costs. Hence, issue no. 8 was answered partly in the negative with respect to specific performance and in the affirmative with respect to refund of earnest money. Hence, order -

ORDER

1. The suit is partly decreed with costs.
2. The defendant shall pay Rs.30,000/- (Rs. Thirty Thousand Only) to the plaintiff from date of agreement to sale (i.e. 31.05.2008) till recovery of entire amount with interest at the rate of 9% p.a. within 30 days from date of judgment.
3. A charge for the earnest amount of Rs. 30,000/- (Rupees Thirty Thousand Only) along with interest shall remain on the suit property until full recovery of the entire due amount.
4. If the defendant fails to pay the earnest amount with interest, the plaintiff may recover it through the Court.
5. Decree be drawn up accordingly.

(Dictated and pronounced in open court.)

Place: Satara.
Date: 20.07.2026.

(A. B. Redkar)
9th Joint Civil Judge Senior Division,
Satara.