

MHPU210001782014



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IN THE COURT OF DISTRICT JUDGE-4
KHED-RAJGURUNAGAR, DISTRICT: PUNE
(Presided over by Sumit G. Joshi)

Regular Civil Appeal No. 177/2014
Exh. No.40

Shri Mahadu Kondiba Sandbhor,
Age:-56 years, Occ:- Agriculturist,
R/at: Dhonde, Tal: Khed,
District: Pune.

...Appellant
(Original Plaintiff)

V/s

01. **Shri Dattu Genu Kale,**
Age:- 62 years, Occ: Agriculturist,
02. **Tarabai Dattatraya Tanpure,**
Age:-Adult, Occ: Agriculturist,
03. **Shri Manik Dattatraya Tanpure,**
Age:- 35 years, Occ: Service,
04. **Shri Haridas Dattatraya Tanpure,**
Age:- 30 years, Occ: Service,

All R/at Donde, Tal: Khed,
District: Pune.

...Respondents
(Ori Deft no.1 to 4)

APPEAL UNDER SECTION 96 OF THE CODE OF CIVIL
PROCEDURE, 1908.

Ld. Advocate for Appellant :- Shri Laxmikant Shrimangale.
Ld. Advocate for Respondent no.1 :- Shri Sumit Nikam.
Respondent no.2 to 4 :- Served. Ex-parte

J U D G M E N T

(Delivered on this 10th day of August 2026)

Being aggrieved and dissatisfied by the judgment and decree dated 27/07/2007 passed by the Learned Joint Civil Judge, Junior Division, Khed, District: Pune in Regular Civil Suit no. 55/2003, the appellant has preferred the present appeal under section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the CPC” for short). The learned trial court by the said impugned judgment was pleased to partly decree the suit filed by the plaintiff and further direct the defendant no.1 to refund the earnest amount while refusing the relief for specific performance of contract.

2] The appellant is the original plaintiff and the respondents are the original defendants. The parties are hereinafter referred to as per their original nomenclature before the learned trial court. The facts in brief giving rise to the filing of the present appeal are summarized as under-

3] The plaintiff had filed suit for specific performance of contract, recovery of possession and in the alternative for refund of earnest amount. It was the case of the plaintiff that the property bearing Gat no. 86, situated at Donde, Tal: Khed, District: Pune was the ancestral property of the defendant no.1. In the year 1987, the defendant no.1 was in need of money and

therefore he had approached him for purchasing his property for a consideration of Rs. 21,000/-. Accordingly, both the parties entered into an agreement of sale and the plaintiff paid earnest amount of Rs.18,000/- at the time of execution of the agreement to sell. It was agreed that the possession of the suit property will be handed over at the time of the sale deed.

4] It was further the case of the plaintiff that since the suit property was declared to be in the zone of Chaskaman dam project, the sale deed could not be executed nor possession of the same be handed over. It was decided that the defendant no.1 has to seek permission for execution of the sale deed and after obtaining the same, he has to intimate the plaintiff by sending written notice. The sale deed would be executed within the prescribed period after written notice. It was the case of the plaintiff that he was and is always ready and willing to perform his part of contract. The plaintiff repeatedly asked the defendant no.1 about the permission, however the defendant no.1 sought time saying that the permission was not granted.

5] It was also the case of the plaintiff that another property of the defendant no.1 i.e Gat no. 136 was acquired by the government. The defendant no.1 requested the land acquisition officer to acquire the suit property instead of land bearing Gat no. 136. The Rehabilitation Officer acquired the suit property vide Mutation entry no. 1357. The plaintiff came to know about this, only when he saw 7/12 extract of the suit property. The plaintiff further contended that the rehabilitation officer had only prepared record and the possession was never

handed over to the defendant no.3 and 4. The plaintiff therefore filed suit for specific performance of contract, for possession of the suit property and in the alternative for refund of earnest amount with 18% interest per annum.

6] The suit summons was duly served upon the defendants. The defendant no.1 appeared and filed his written statement vide Exhibit 12 denying the contents of the plaint. The defendant no.1 in his written statement submitted that the suit property was acquired by the Government for Chaskaman water channel and hence the government was the necessary party. The defence of the defendant no.1 was that his wife was admitted in Kasturba hospital at Rajgurunagar and therefore he was in need of money. He demanded Rs. 18,000/- from the plaintiff and therefore, the agreement to sale was executed as collateral security. The defendant no.1 further contended that in November 1990, he returned the entire money and requested the plaintiff for cancellation of the agreement to sale. However, the plaintiff avoided to cancel. Hence, he prayed for dismissal of the suit.

7] The defendant no.2 to 4 though appeared on service of suit summons, they failed to file written statement. The suit was directed to proceed without written statement against them.

8] The learned trial court on the basis of the averments in the suit and written statement framed issues as to whether the plaintiff and the defendant no.1 had entered into agreement for sale, whether the plaintiff pleaded and proved his readiness and willingness to perform his part of contract, whether the suit

was filed within limitation, whether the plaintiff was entitled to get the sale deed executed in his favour and whether the plaintiff in the alternative is entitled to get refund of earnest amount.

9] The plaintiff in order to prove his case examined himself at Exhibit 21 and one witness Shri Kamlakar Ramchandra Mhetre at Exhibit 60 and closed his case by filling pursis at Exhibit 60. The defendant no.1 did not lead any evidence and filed pursis at Exhibit 67.

10] The learned trial court after scrutinizing the evidence available on record, held that plaintiff had proved that the agreement to sell was duly executed, the plaintiff was always ready and willing to perform his part of the contract, and that defendant No. 1 committed breach of the agreement. However, the learned trial court declined the relief of specific performance on the ground that the suit property was subsequently acquired by the Government and was allotted to defendant no.2 to 4. Consequently, the Trial Court directed refund of the earnest money with interest. Being aggrieved by the same, the plaintiff has preferred the present appeal.

11] Though most of the findings of the learned trial court are against the defendant no.1, the defendant no.1 has not filed any appeal nor has preferred Cross Appeal or Cross Objection. There is no challenge to the findings of the Trial Court that the agreement to sell was genuine, that the plaintiff was ready and willing to perform his part of the contract, and

that defendant No. 1 failed to perform his contractual obligations. Those findings have therefore attained finality.

12] The learned Advocate for the appellant/Plaintiff submitted that the learned trial court erred in refusing the relief of specific performance of contract to the plaintiff. He urged that when the trial court had recorded the finding as to the execution of the agreement to sale and also the readiness and willingness of the plaintiff, the discretion exercised by the trial court was unreasonable. He submitted that the defendant no.1 after execution of the agreement for sale, deliberately in order to avoid execution of sale deed had himself requested the land acquisition officer to acquire the suit property instead of another property. In such circumstances, as there was no fault on the part of the plaintiff, the trial court ought to have directed specific performance of contract.

13] In support of his arguments that specific performance ought to have been granted and the discretion exercised by the trial court was unreasonable, he relied upon the judgments in the case of *Babasaheb vs Radhu Barde: 2024 INSC 122* and *Hariba Babar vs Appasaheb: Bombay High Court, Second Appeal no. 95/1998 decided on 22/02/2007*.

14] As against this, the learned Counsel for the respondent no.1 supported the findings of the learned trial court. He submitted that at the time of filling of the suit, the defendant no.1 did not have title over the suit property. The property was vested in the government and the same was allotted in favour of the defendant no.2 to 4 for their

rehabilitation. In such circumstances, the discretion exercised by the trial court was just and proper. He, therefore prayed for dismissal of the appeal.

15] Perused the impugned judgment and record of evidence. Keeping in mind the mandate of Order 41 Rule 31 of C.P.C., on the only points that arise for my consideration, I have rendered my findings with reasons thereon as under-

Sr. No.	<u>Points</u>	<u>Findings</u>
1.	Whether the Trial Court erred in refusing the decree for specific performance despite recording findings in favour of the plaintiff that defendant no.1 had entered into an agreement of sale.?	...No.
2.	Whether the plaintiff is entitled for decree of specific performance of contract.?	...No.
3.	Whether the impugned judgment and decree warrants interference in appellate jurisdiction under Order 41 Rule 33 of C.P.C.?	...No.
4.	What Order.?	Appeal is Dismissed.

REASONS

AS TO POINT NO. 1 AND 2 :

16] Since all these points are interconnected the same are decided together in order to avoid repetition of the facts. At the outset, it needs to be mentioned here that the suit having

been instituted prior to the amendment of the Specific Relief Act, 1963, the rights of the parties are governed by the unamended provisions of the Act. Under Section 20 of the unamended Act, the jurisdiction to decree specific performance is discretionary. Though the discretion is not arbitrary, the Court is not bound to grant specific performance merely because it is lawful to do so. The discretion is required to be exercised on sound and reasonable judicial principles.

17] In the present case, the plaintiff examined himself at Exhibit 21. In his examination in chief, he reiterated the contents of the plaint. He deposed that at the time of agreement to sale, he had paid Rs. 18,000/- to the defendant no.1 as earnest amount and balance consideration of Rs.3000/- was to be paid at the time of Sale Deed. The defendant no.1 was required to obtain permission for execution of the sale deed and to intimate the plaintiff. As, the defendant no.1 never obtained the permission, there was no occasion for the plaintiff to approach him for execution of the sale deed. He further deposed that the defendant no.1 deliberately applied to the acquisition officer for acquiring the suit property instead of Gat no. 136 and the acquisition officer instead of verifying whether any transaction was entered into with respect to the suit property acquired the same and handed over it to defendant no.2 to 4.

18] The defendant no.1 cross examined the plaintiff at length. The defendant no.1 tried to put his defence of collateral security towards hand loan, however, the said suggestion was denied by the plaintiff. The defendant no.1 had also tried to

bring on record that the plaintiff had on several occasions prior to execution of the agreement of sale, lend money to the defendant no.1 and therefore the agreement was a collateral security. However, the said suggestion was also denied by the plaintiff. Though, the defendant no.1 through his lengthy cross examination tried to establish his defence, however, the onus of the same was on the defendant no.1 and the same was required to be discharged by leading evidence. The defendant no.1 did not enter into the witness box and hence, the contention of the defendant no.1 that the agreement was collateral security was not proved.

19] The plaintiff in order to prove the fact that the defendant no.1 deliberately to frustrate the agreement to sale had himself requested the land acquisition officer to acquire the suit property examined PW 2 Kamlakar Mhetre - Senior Clerk in the office of Special Land Acquisition Officer no. 22, Pune. He deposed that land bearing Gat no. 136 and Gat no. 202 of village Dhonde was selected for acquisition. The defendant no.1 on 30/11/1988 made an application for change of these lands and showed his willingness to give the suit property for acquisition. The Land Acquisition officer recorded the statement of defendant no.1 and all the papers were forwarded to Collector as per procedure. The Collector gave approval towards the acquisition of the suit property.

20] The defendant no.1 cross examined this witness. He admitted during his cross examination that he does not know the name of the officer who recorded the statement of the

defendant no.1. He also admitted that he cannot tell the name of the officer to whom the defendant no.1 had made the application. He also admitted that he joined the office of Land Acquisition officer in the year 2004. Though, from the tenor of the cross examination taken by the defendant no.1, it was tried to bring on record that the defendant no.1 did not make any application for interchanging the land, however, the perusal of the application show that the same is signed by the defendant no.1 and also that his statement was recorded. Even otherwise, it was not the defence of the defendant no.1 that he did not make such application.

21] From overall scrutiny of the evidence, it is clear that the defendant no.1 had made application to the land acquisition officer and the suit property was acquired by the government. Further, after the acquisition of the suit property, the name of the government was mutated in the revenue record and later on, the suit property was allotted to defendant no.2 to 4 for their rehabilitation. Thus, the defendant no.1 nor the government had title over the suit property at the time of filling of the suit.

22] In view of the fact that the agreement to sale was proved by the plaintiff and his readiness and willingness was also proved, the learned advocate for the plaintiff/appellant submitted that there was evidence to show that the defendant no.1 himself had made application to the government to acquire the suit property. In such circumstances, when the plaintiff had bonafidely entered into agreement with him, he cannot be made to suffer only because the title does not vest with the defendant

no.1 and therefore the trial court ought to have directed specific performance of contract.

23] With regard to this submission, it needs to be mentioned here that the record as well as evidence of PW 2 Kamlakar discloses that subsequent to the agreement to sell, the suit property came to be acquired by the government i.e. the suit property vested absolutely in the Government free from all encumbrances. Thereafter, the property was allotted to defendants Nos. 2 to 4 under a rehabilitation scheme. The plaintiff neither challenged the acquisition proceedings nor sought cancellation of the allotment made in favour of defendants Nos. 2 to 4. Further, the property was allotted to defendants Nos. 2 and 3 under a rehabilitation scheme and not as private transferees from defendant No. 1. The rights of the defendant no. 2 to 4 cannot be displaced in a suit filed by the plaintiff for specific performance of contract, particularly when the acquisition and subsequent allotment were not under challenge.

24] It is settled principle that a decree for specific performance compels the execution of a conveyance of property by a person competent to transfer it. Once the property was vested in the government by operation of law, defendant No. 1 lost his right, title or interest in the suit property. Hence, the court cannot compel execution of a sale deed in respect of suit property which no longer belong to the defendant no.1. Though the appellant is correct in making submission that defendant no.1 cannot take advantage of his own wrong, the said

submission cannot be accepted in the facts of the present case. The plaintiff has not questioned the legality and validity of the acquisition proceedings. Thus, the contractual obligation cannot be specifically enforced against property that has ceased to belong to the vendor i.e the defendant no.1.

25] The Learned Advocate for the appellant has relied upon the judgment of the Hon'ble Apex Court in the case of ***Babasaheb vs Radhu (supra)*** wherein the Hon'ble Apex Court directed the specific performance of contract even though there was bar as pr section 36A of the Maharashtra Land Revenue Code for transfer of land. I have minutely gone through the entire judgment. The facts in that case and the fact in the present case are distinguishable. In the case before the Hon'ble Apex Court, specific performance of contract was initially refused by the High Court on the ground of bar under section 36 A of the Maharashtra Land Revenue Code. The Hon'ble Apex Court held that the question of bar would come into picture at the time of execution of sale deed and the purchaser would be required to seek permission for execution of the sale deed. In that case, the land was neither acquired by the government nor it was allotted to some beneficiary as per acquisition laws. However, in the present case, the suit property was acquired by the government and subsequently allotted to defendant no. 2 to 4. Hence, the ratio laid down by the Hon'ble Apex Court is not helpful to the appellant.

26] The learned Advocate for the appellant further submitted that the provisions of section 20 of the Specific Relief

Act were not properly appreciated by the trial court. In support of his submission, he relied upon the judgment in the case of ***Hariba Babar vs Appasaheb*** (supra). No doubt it is true that the discretion vested in the court is required to be based upon sound judicial principles. However, at the same time courts cannot grant inexecutable decree. The Hon'ble Apex Court in the case of ***K. Narendra v. Riviera Apartments (P) Ltd : (1999) 5 SCC 77*** while considering the question of specific performance of contract in para 29 held as under:

*“29:- Section of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in ***Lourdu Mari David and others vs Louis Chinnaya Arogiawamy: (1996) 5 SCC 589*** by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.”*

27] In the present case, the Trial Court has exercised the discretion vested under Section 20 of the Specific Relief Act on sound judicial principles. The trial court rightly observed that the land was allotted to defendant no.2 to 4 after following due procedure under the Rehabilitation scheme. They had become owner of the suit property by order of the competent authority and were in possession of the suit property since 10/06/2002. The trial court held that agreement to sale executed by the defendant no.1 in favour of the plaintiff cannot be said to be binding upon the defendant no. 2 to 4 and execution of sale deed against defendant no.1 will create hardship on defendant no. 2 to 4. The trial court rightly directed refund of earnest amount with 18% per annum by the defendant no.1 to the plaintiff. Such exercise of discretion neither suffers from perversity nor from any error of law. Accordingly, the refusal of decree of specific performance call for no interference. In view of the above discussion, **I, answer point no. 1 and 2 in the negative.**

AS TO POINT NO.3 :

28] Considering the entire discussion, I find that the learned trial court has considered all the aspects and rightly passed the judgment thereby refusing the decree of specific performance of contract and directing refund of earnest amount along with 18% interest per annum. I do not find any ground to take the different view from the view taken by the learned trial court. To sum up, no interference is warranted under Order 41 Rule 33 of CPC. Hence, **I answer point no. 3 in the negative.** Resultantly,

the appeal fails. In the result, in answer to point no.4, I proceed to pass the following order:

:ORDER:

1.	The Reg. Civil Appeal No.177/2014 is dismissed.
2.	The judgment and decree dated 27/07/2007 in Regular Civil Suit No.55/2003 passed by the Joint Civil Judge, Junior Division, Khed, District: Pune is confirmed.
3.	Decree be drawn up accordingly.
4.	Record and proceedings be sent back to the learned trial Court.

(Dictated and pronounced in open court.)

Khed-Rajgurunagar
Date : 10/08/2026

Sd/-xxx
(Sumit G. Joshi)
District Judge - 4,
Khed-Rajgurunagar, Dist.Pune

CERTIFICATE

I affirm that the contents of PDF file Judgment are same word for word as per original Judgment.

Name of Steno	M.L.Khan (Stenographer Grade-II)
Court Name	Shri. Sumit G. Joshi District Judge – 4, Khed-Rajgurunagar, Dist.Pune.
Date of Order	10/08/2026
Order signed by Presiding Officer on	11/08/2026
Order uploaded on	11/08/2026