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IN THE DISTRICT COURT AHMEDNAGAR,
BEFORE AD-HOC DISTRICT JUDGE - 5, AHMEDNAGAR.

(Presided over by : Rutuja S. Bhosale)
(Judge Code : MH00165)

REGULAR CIVIL APPEAL No.229/2024
CNR No.MHAH01-006733-2024

EXH. NO.10

Mohan Jayram Jangam,
Age: 32, Occ : Labour,
R/o. Buradgaon,
Tal. & Dist. Ahmednagar.

.... **APPELLANT**

V E R S U S

Pramila Rajendra Chavan,
Age : 45 Years, Occ. Agri. & Housewife,
R/a. Nagar Solapur Road,
Wakodi, Darewadi,
Tal. & Dist. Ahmednagar.

.... **RESPONDENT**

APPEAL :- As per Order 41 OF C.P.C.

APPEARANCE :- Adv. Shri.D.P Dhiwar for the Appellant
Adv. Smt. J.V. Gavade for the Respondent

:- J U D G M E N T :-
(Delivered On 19th Day of August, 2026)

This appeal is directed against the judgment and decree dated 30.09.2024 passed by Ld. 2nd Jt. Civil Judge Senior Division,

Ahmednagar, in R.C.S. No.21/2022, whereby the suit filed by the plaintiff/ appellant for specific performance of agreement to sale dated 31.01.2020 came to be dismissed. *(The parties will be hereinafter referred by their original nomenclature for convenience).*

2. The controversy in the present appeal is somewhat unusual. The Ld. Trial Court has recorded the findings substantially in favour of the plaintiff, on the principle contractual questions. It has been held that the agreement to sale in question is proved, it has rejected the defence of the defendant/ respondent that the transaction was in reality a hand loan transaction and it has further held that plaintiff was ready and willing to perform his part of contract. However the Ld. Trial Court ultimately refused the relief of specific performance on the ground that the proposed transaction would be hit by the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. (for short herein after referred to as “Consolidation and Fragmentation Act”)

3. The important aspect is that there was no pleading by the defendant that the transaction was hit by the Consolidation and Fragmentation Act, no issue was framed on that question and no opportunity was offered to the parties to lead evidence considering the applicability of the said Act.

4. The plaintiff instituted the suit seeking specific performance of the agreement to sell executed by the defendant in respect of the suit property. According to the plaintiff, the defendant agreed to sell the suit property for total consideration of Rs.1,95,000/- and accepted an amount of Rs.1,00,000/- in pursuance

thereof. The agreement is registered on 13.01.2020 vide registration No.250/2020 at the Sub-Registrar Office, Ahmednagar. The plaintiff asserted that he was always ready and willing to perform remaining obligation and repeatedly called upon the defendant to execute the sale deed. According to the plaintiff on 15.09.2021 he issued a notice to the defendant served upon her on 16.09.2021. In spite, the defendant failed to execute the sale deed and hence the plaintiff was compelled to file the suit.

5. The defendant by way of written statement Exh.39 resisted the suit. The principle defence of the defendant was that, the transaction was not an agreement to sell but was merely a transaction of hand loan. It was contended that the value of the suit property at relevant time was approximately rupees ten to twelve lac per guntha, whereas amount involved in the transaction was only Rs.1,95,000/-. According to the defendant such a disparity demonstrates that there was no real intention to sale the property and that the document relied upon by the plaintiff was merely a security for the repayment of the loan.

6. The Ld. Trial Court after appreciating the oral and documentary evidence held that the plaintiff proved the agreement to sell Exh.27 coupled with the point of ready and willingness. However as mentioned in the foregoing para, the decree was refused on the ground that the transaction would be hit by the provisions of Consolidation and Fragmentation Act. The plaintiff therefore has preferred this appeal.

7. I have heard Ld. advocate Shri. D.B. Dhivar for the

appellant and Ld. advocate Smt. Jayshree Gavade for the respondent. I have also perused all material on record. Following points arise for my determination and I have answered the same for the reasons given below -

<u>No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether plaintiff proves that defendant executed agreement to sell dated 13.01.2020 in favour of the plaintiff?	Yes
2.	Whether defendant proves that the transaction was of hand loan and not of agreement to sell?	No
3.	Whether plaintiff proves that he was continuously ready and willing to perform his part of contract?	Yes
4.	Whether the Ld. Trial Court was justified in refusing the decree of specific performance on the ground that the proposed transaction would be hit by Consolidation and Fragmentation Act?	No
5.	Whether plaintiff is entitled to decree of specific performance as prayed?	Yes
6.	Whether any interference at the hands of this court is warranted?	Yes
7.	What order and decree?	The appeal is allowed.

: REASONS :

Points No.1 & 2 :-

8. The agreement relied upon by the plaintiff Exh.27 is a registered document. The defendant does not dispute the execution

of the document in the manner contemplated by law. Her contention is only that the document in question though styled as an agreement to sell, the real transaction between the parties was of hand loan.

9. It is necessary to examine this defence carefully because if it is proved it would destroy the very foundation of the plaintiff's claim. The defendant relies principally upon the circumstance that the value of the suit property was approximately rupees ten lac to twelve lac per guntha. Whereas the amount of Rs.1,95,000/- is shown as total consideration. According to the defendant no reasonable owner would agree to sale property worth lacs of Rupees only for Rs.1,95,000/- and therefore the transaction must necessarily be a transaction of hand loan. The second argument of the defendant appears to be that she has examined D.W.-3 Dinesh Vishwanath Yeole who has stated that plaintiff used to give hand loan and by way of security used to get executed the agreement to sell.

10. I am unable to accept the submission that inadequate consideration by itself establishes that the transaction was of hand loan. The court has to examine the document, the surrounding circumstances, the conduct of the parties and the evidence available on record. The defendant was therefore required to establish by cogent evidence that the registered document was not intended to operate as an agreement to sell.

11. The second aspect about the evidence of D.W.-3 Dinesh Vishwanath Yeole is seen that the witness has not given the details of his own transaction which he claimed to be transaction of hand loan. The Ld. Trial Court has considered all these aspects and has recorded

finding that defendant failed to prove hand loan theory. No material has been demonstrated before this court to show that the said finding of the Trial Court is perverse or contrary to the evidence. The registered document has to be given due evidentiary value unless its legal effect is displaced by acceptable evidence. Consequently the finding of the Trial Court rejecting the defence of the hand loan deserves to be confirmed. Accordingly point No.1 is answered in **Affirmative** and point No. 2 in **Negative**.

Point No.3 :-

12. The Ld. Trial Court has specifically recorded a finding that the plaintiff was ready and willing to perform his part of contract. The Ld. Trial Court for that purpose has considered the pleading of the plaintiff in paragraph No.3 of the plaint and has also considered the evidence of the plaintiff to that effect. The financial capacity of the plaintiff is not disputed at all. The plaintiff has placed on record notice Exh.12, by which the defendant was called upon to execute the sale deed as agreed. It is admitted that the notice was not replied by the defendant nor she remained present in the Sub-Registrar's Office to execute sale deed. On this background the defence of the defendant appears to be an after thought. In such circumstance I find that the conclusion of the Ld. Trial Court that the plaintiff proved the point of readiness and willingness needs no interference. Accordingly point No.3 is answered in **Affirmative**.

Point No.4 :-

13. The defendant's pleading was that the transaction was of hand loan. There was no specific plea that the agreement to sell was

unenforceable because of the suit property constituted a fragment or because of proposed transfer being prohibited under the Consolidation and Fragmentation Act. Naturally no issue was framed to decide the above controversy. It is also surprising that in the judgment the Ld. Trial Court has even not suggested that in the argument the defendant raised this point. Therefore it is clear that there was absolutely no opportunity to the parties either to lead evidence or to argue aspect of provisions of Consolidation and Fragmentation Act. According to this court a decision cannot ordinarily be based upon the grounds outside pleadings and that it is the case pleaded by the parties which has to be adjudicated. At this juncture it would be proper to refer to judgment of Hon'ble Supreme Court between **Bachhaj Nahar Vs. Nilima Mandal & Ors** wherein Hon'ble Supreme Court has considered this point. Hon'ble Apex Court has held that *"The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. A case not specifically pleaded can be considered by the court only where the pleadings in substance, though not a specific terms, contains the necessary averments to make out a particular case and the issues framed also generally covered the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon."*

In the present case neither there was a pleading nor issues nor evidence even no arguments concerning the provisions of

Consolidation and Fragmentation Act were made. The Ld. Trial Court therefore would not make the statutory objection the foundation for the dismissal of the suit.

14. There is an additional and more fundamental reason why the approach of the Ld. Trial Court could not be sustained. The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act creates a special statutory scheme regarding questions entrusted to the authorities under the enactment. Section 36A of the Consolidation and Fragmentation Act bars the jurisdiction of the Civil Court in respect of a question which requires to be settled, decided or dealt with by the state government or by the competent authority. Section 36B of the said Act provides the mechanism where an issue falling within the statutory jurisdiction of the competent authority if arises in the suit before a civil court, that issue has to be referred to the concerned authority. In short where a question arises as to whether the land which is subject matter of the transaction is a fragment and such a question is required to be decided, the civil court cannot itself decide the question and the issue needs to be referred to the competent authority.

15. The civil Court is competent to adjudicate only the contractual disputes whether there was valid agreement to sell? Whether the defendant executed it? Whether the plaintiff was ready and willing to perform his part of contract? And whether plaintiff is entitled for specific performance? These are the questions arising under the Law of Contract and Specific Relief Act and the civil court is competent to decide those questions. However the Civil Court

cannot usurp that statutory jurisdiction.

16. In the light of the above discussion the question arose whether to consider at this stage the point raised by the Ld. Trial Court that the suit property is a fragment or otherwise. In that regard it is seen from the various notifications of Government of Maharashtra placed on record by the appellant in this appeal I.e. the notifications dated 3 November 2025, 31 December 2025, 25 January 2008 that even though the suit property is a fragment still the government has sufficient power to regularize such transactions even after execution of sale deed. This court has therefore two options. First is to pass decree subject to the provisions of the Consolidation and Fragmentation Act and second is to remand the suit with direction to refer. However for the purpose of remand, I find no justifiable reason since there is no pleading at all to frame the issue to refer under Section 36B of Consolidation and Fragmentation Act. If no issue be possibly framed there is no purpose in remanding the suit. I therefore find a logical solution is to pass a decree, execution of sale would be subject to the decision of the competent authority under the Consolidation and Fragmentation Act if any. I therefore answer issue No.4 in the **Negative** holding that the conclusion of the Ld. Trial Court refusing a decree for specific performance is not justifiable.

Points No5 & 6 :-

17. Once the Ld. Trial Court reached the conclusion that the agreement in question was genuine, the defence of hand loan is not tenable and that the plaintiff was and is ready and willing to perform

his part of contract, there remains no logical justification for refusing the equitable relief solely upon an issue which neither arose from the pleading nor falls within the jurisdiction of the civil court. The refusal of the decree is therefore unsustainable and for that purpose the interference of the hands of this court is absolutely necessary. Accordingly the points are answered and I proceed to pass following order.

: ORDER :

1. The appeal is allowed.
2. The judgment and decree passed by Ld. 2nd Jt. Civil Judge, Senior Division, Ahmednagar in R.C.S. No.21/2022 dated 30.09.2024 are quashed and set aside.
3. The finding of the Ld. Trial Court that agreement in question is genuine, the defence of hand loan is not justifiable and that the plaintiff was ready and willing to perform his part of contract are hereby confirmed.
4. The plaintiff is entitled for specific performance of contract dated 31.01.2020 Exh.27. The defendant is directed to execute the sale deed of the suit property in favour of the plaintiff and handover the possession of the suit property on accepting the remaining consideration.
5. If defendant fails to execute the sale deed as directed above within period of two months, the plaintiff shall deposit the remaining consideration in the executing court.
6. The execution and completion of sale transaction shall

be subject to the compliance with the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and to such determination or orders as may be passed by the competent authority where ever such a determination is required under the Act.

7. Parties shall bear their own costs.
8. The true copy of judgment be sent to the Trial Court along with the record and proceeding of the suit.
9. Preliminary decree be drawn up accordingly.

Date : 19.08.2026.
Place : Ahmednagar.

(Rutuja S. Bhosale)
Adhoc District Judge-5,
Ahmednagar.