MHAM010037252015	Presented on : 10-12-2015 Registered on: 10-12-2015 Decided on : 30-06-2026 Duration : Years, Months, Days 10 06 20

IN THE COURT OF DISTRICT JUDGE-3, AT AMRAVATI.

(Presided over by P. P. Sharma)

R.C.A. No.196/2015 **EXH NO.79**

Mohd.Kannisodin @ Kannubai Jadin (Dead) Through Legal Heirs

1. Mohammad Mounuddin Mohammad Kaneezuddin @ Kannisodin,
Aged about 34 years,
Occu: Business & Agricultural,

2. Mohammad Faizuddin S/o Mohd. Kannezuddin @ Kannisodin,
Aged about 37 years, Occu: Business & Agricultural,

Both R/o Wadgaon, Tq. and Dist. Amravati, and 3-6 27/3 Frozen Manzil, Basheer Bagh, Himayatnagar, Hyderabad.

3. Wasudeo Kodumal Khemchandani,
Aged 67 years, Occ.Business,
R/o Ambika Nagar, Near Kanwar Nagar, Amravati, Tq and Dist. Amravati. ...**APPELLANTS**.

VERSES

Pawankumar Shivnarayan Saraiyya **(Dead)** Through Legal heirs.

1a Sudha Pawankarm Saraiyya,
Aged 52 years , Occ. Business.

2b Rajesh Pawankumar Saraiyya,
Aged adult, Occ. Business.

3c Pankaj Pawankumar Sariyya,
Aged adult, Occ. Business.

4d Niraj Pawankumar Saraiyya,
Aged adult, Occ. Business.

1 to 4 R/o Lala's Chawl, Hamalpura,
Tq & Dist.Amravati.

2. Deputy Collector/Special Land
Acquisition Officer,
U. W. P. No.2, Amravati,
Add. Yojna Bhavan, Behind Collector
Office, Collectorate Premises, Camp,
Amravati.

3. Union of India through Ministry of
Road Transport and Highways, New
Delhi.

Add: Ministry of Road, Transport and
Highways, Transport Bhavan, 1
Parliament, Stree, New Delhi 110 001.

4. Project Director, National Highway
Authority of India, Amravati

Add: Dremland Nagpur road,
Amravati. **RESPONDENTS**

CLAIM: Appeal under Section 96 of the Code of Civil
Procedure, 1908.

Shri.A.M.Jain, Ld. Advocate for Appellants.
Shri.C.S.Pathak, Ld. Advocate for the Respondent No.1
Shri.Shrikant Gohad,Ld. Advocate for the Respondants No.2 to 4

J U D G M E N T
(Delivered on 30-06-2026)

The present appeal is directed against the Judgment and Decree dated 10.03.2005 passed by the learned Joint Civil Judge (Senior Division), Amravati, in Special Civil Suit No.257 of 1996, whereby the suit instituted by the plaintiff for specific performance of contract, possession, permanent injunction and, in the alternative, refund of earnest money together with damages, came to be dismissed.

2) Being aggrieved by the dismissal of the suit, the original plaintiff has preferred the present appeal under Section 96 of the Code of Civil Procedure.

3) For the sake of convenience, the parties are referred to by their original status before the Trial Court.

FACTS OF THE CASE :

4) The case of the plaintiff, in brief, is that Survey No.133 admeasuring 7 Acres 34 Gunthas and Survey No.125 admeasuring 22 Acres 08 Gunthas situated at Mouza Rahatgaon, Pragane Nandgaon Peth, Taluka and District Amravati (hereinafter referred to as "the suit property") belonged to the defendant. According to the plaintiff, on 24.07.1995, the defendant agreed to sell the suit property at a rate of Rs. 1,11,000/- per acre. A document titled "Sauda Chitthi" (Exh. 54)

was executed on the same day. The plaintiff paid Rs.19,101/- as part consideration. It was agreed that a further sum of Rs. 6,25,000/- would be paid on or before 15.08.1995, and the sale deed would be executed on or before 15.08.1997.

5) It is the plaintiff's case that the transaction was negotiated through estate broker Kishorbhai Dakshine. Under the terms of the Sauda Chitthi, the defendant was required to furnish the Record of Rights and title documents. Upon obtaining certified copies of the revenue record, the plaintiff found that a tenant's name appeared in respect of the suit property. The defendant assured that the said entry would be removed, but failed to do so. According to the plaintiff, although he was ready and willing to pay Rs. 6,25,000/-, the defendant refused to accept the same and also failed to furnish the title documents. A legal notice (Exh.57) was, therefore, issued calling upon the defendant to perform his part of the contract. Ultimately, on 10.07.1996, the defendant declined to execute the sale deed. Hence, the plaintiff instituted the above civil suit for seeking specific performance.

DEFENCE :

6) The defendant resisted the suit by filing a written statement. He denied that any concluded agreement for sale had been entered into between himself and the plaintiff. According to him, he had never negotiated through broker Kishorbhai Dakshine nor had he met the plaintiff personally. The defendant contended that one Narendra Rathi had approached him regarding the purchase of the property and had paid Rs.19,101/- merely as an advance towards a proposed transaction. According to the defendant, the amount of Rs.

6,25,000/- was never paid, and therefore no final agreement came into existence.

7) The defendant further pleaded that Exh.54 was merely a preliminary Sauda Chitthi or token document and not an enforceable agreement for sale. Since the plaintiff failed to comply with the condition requiring payment of Rs. 6,25,000/- before 15.08.1995, the advance amount was forfeited. He denied having committed any breach of contract and prayed for dismissal of the suit.

EVIDENCE BEFORE THE TRIAL COURT :

8) On the basis of rival pleadings, the learned Trial Court framed the necessary issues (Exh.30). The plaintiff examined Wasudeo Khemchandani (PW-1), the power of attorney of the plaintiff, and Shankar Thakur (PW-2). The defendant examined himself as DW-1 and also examined Shivkumar Jaiswal (DW-2), who was one of the witnesses to Exh.54.

9) Upon appreciation of the oral and documentary evidence, the learned Trial Court held that the plaintiff had failed to establish his entitlement to the equitable relief of specific performance and consequently dismissed the suit. Hence, the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANTS/PLAINTIFFS :

10) Learned Advocate for the plaintiff submitted that the learned Trial Court committed a serious error in holding that Exh.54 was not an enforceable agreement for sale.

11) It was contended that Exh.54 contains all the essential terms of the contract, including identification of the property, consideration, time for payment, and time for execution of the sale

deed. According to the plaintiff, the document constitutes a complete and concluded agreement capable of specific enforcement.

12) Learned Advocate further submitted that the defendant himself admitted the execution of Exh.54 as well as the receipt of Rs.19,101/-. These admissions, according to the plaintiff, clearly establish the existence of the contract.

13) It was next argued that the defendant had undertaken to furnish the Record of Rights and title documents but failed to do so. Consequently, it was the defendant who committed the first breach of the agreement and therefore could not insist upon the plaintiff's strict compliance.

14) Learned Advocate further submitted that the plaintiff was always ready and willing to perform his part of the contract. It was pointed out that during the pendency of the proceedings, the entire balance consideration was deposited before the Court pursuant to judicial directions, thereby demonstrating the bona fides of the plaintiff.

15) It was also contended that the Trial Court committed an error in drawing an adverse inference merely because the original plaintiff did not enter the witness box. According to the appellants, the constituted attorney was fully conversant with the transaction and was therefore competent to depose on behalf of the plaintiff.

16) Learned Advocate, therefore, prayed that the appeal be allowed and the suit be decreed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS/DEFENDANTS :

17) Per contra, learned Advocate appearing for the defendant supported the impugned judgment in its entirety.

18) It was submitted that Exh.54 was merely a preliminary document recording the initial understanding between the parties and not a concluded agreement capable of specific performance.

19) Learned Advocate submitted that the only obligation for which a definite date had been prescribed under Exh.54 was the payment of Rs.6,25,000/- on or before 15.08.1995, and admittedly the plaintiff failed to comply with the said condition.

20) It was further contended that the plaintiff failed to establish continuous readiness and willingness as required under Section 16(c) of the Specific Relief Act.

21) Learned Advocate also submitted that the original plaintiff deliberately avoided entering the witness box, though all material facts regarding negotiations, payment of consideration and readiness and willingness were exclusively within his personal knowledge.

22) It was argued that the power of attorney could not substitute the testimony of the principal in respect of facts lying within the exclusive knowledge of the principal himself.

23) Learned Advocate therefore submitted that the findings recorded by the Trial Court are based upon proper appreciation of evidence and do not warrant interference in appeal.

POINTS FOR DETERMINATION :

24) Having heard the learned Advocates for the parties and upon perusal of the record, points arise for determination, along with the finding and reasons for the finding as follows.

Sr. No.	Points	Findings
(i)	Whether Exh.54 (Sauda Chitthi) constitutes a concluded and enforceable agreement for sale?	No.
(ii)	Whether the plaintiff has established continuous readiness and willingness to perform his part of the contract?	No.
(iii)	Whether the impugned Judgment and Decree warrant interference in appeal?	No.
(iv)	What order?	As per the final order

<u>REASONS</u>

25) Since all the points arise out of the same transaction and are interconnected, they are taken up together for consideration.

<u>ORAL EVIDENCE</u> :

26) The plaintiff examined Wasude (PW-1), who is the power of attorney holder of the plaintiff. Due to subsequent developments, he has also become an assignee and a party to the proceedings. He deposed before the Court regarding the nature and contents of Exh.54. He claimed that he was present at the time of execution of Exh.54. However, his presence at the time of execution of Exh.54 was not mentioned either in the plaint or in the legal notice (Exh.57) issued on behalf of the plaintiff.

27) The record shows that the power of attorney at Exh.52 was executed on 16/07/1996, i.e., about one year after the execution of Exh.54. It is also significant that the power of attorney does not mention that Wasude (PW-1) was present at the time of the execution of Exh.54.

28) The plaintiff also examined Shankar (PW-2). He is the witness to the power of attorney. He deposed regarding the execution of the power of attorney and Exh.54.

29) The defendant examined Pawan Kumar, i.e., defendant No.1. He deposed that Narendra Rahti entered into the transaction with him on behalf of the plaintiff. He also stated the terms and conditions of the transaction. However, he further stated that Exh.54 was not the final agreement but was only a *tokan chitti* (initial document). The substance of his evidence is that the plaintiff was not present at the time of execution of Exh.54. He further stated that he had no knowledge about Wasude (PW-1) and that Wasude had never visited him either before or at the time of execution of Exh.54. In his cross-examination, however, he admitted the execution of Exh.54 and the contents thereof.

30) The defendant also examined Shivkumar (DW-2), who is a witness to Exh.54. He deposed that he was present at the time of execution of Exh.54. He further stated that after the *sauda chitti*, the *issar chitti* was executed after some time. He also gave evidence regarding the contents of Exh.54.

APPRECIATION OF ORAL EVIDENCE :

31) Wasudeo (PW-1) deposed regarding the execution of Exh.54 and stated that he was personally present when the document

was executed. He also sought to prove the plaintiff's readiness and willingness to perform the contract. However, this assertion immediately raises a significant difficulty. Neither the plaint nor the legal notice (Exh.57) issued before the institution of the suit contains any averment that Wasudeo (PW-1) was present during the negotiations or at the time of execution of Exh.54. Equally, the power of attorney executed in his favour does not record that he had witnessed the transaction or possessed personal knowledge of the negotiations.

32) The omission assumes importance because the alleged presence of Wasudeo (PW-1) at the execution of Exh.54 is not a collateral circumstance but a material fact directly bearing upon the proof of the contract. Had he actually witnessed the transaction, such an important fact would ordinarily have been included in the pleadings.

33) The plaintiffs also examined Shankar Thakur (PW-2), who is a witness to the power of attorney. His evidence is confined substantially to the execution of the power of attorney and certain surrounding circumstances. He is not a witness to Exh. 54, and his testimony does not materially advance the plaintiff's case regarding the execution or performance of Exh.54.

34) The defendant entered the witness box as DW-1. He admitted execution of Exh.54 and receipt of Rs.19,101/-. However, he consistently maintained that the document was merely a preliminary "Sauda Chitthi" recording an initial understanding and not a concluded agreement for sale. The defendant further stated that the transaction had been negotiated through Narendra Rathi and not

through the plaintiff personally. According to him, the plaintiff never complied with the essential condition requiring payment of Rs.6,25,000/- before 15.08.1995.

35) The defendant also examined Shivkumar Jaiswal (DW-2), one of the witnesses to Exh.54. His evidence supports the defendant's version that Exh.54 was executed at the initial stage of negotiations and that further documents were contemplated subsequently.

36) Thus, the execution of Exh.54 is substantially admitted. Now the real controversy is not regarding its execution but regarding its legal character and the consequences flowing therefrom.

NATURE AND LEGAL EFFECT OF EXH.54 (Sauda Chitthi) :

37) The entire case of the plaintiff rests upon Exh.54 dated 24.07.1995, described as a "Sauda Chitthi". It is, therefore, necessary to determine whether the said document constitutes a concluded agreement for sale capable of specific performance or merely records a preliminary understanding between the parties.

38) The execution of Exh.54 is not seriously disputed. The defendant has admitted to signing the document and to receiving Rs. 19,101/-. The dispute centres on the legal effect of the document.

39) A careful reading of Exh.54 shows that it records receipt of Rs.19,101/- by the defendant and describes the suit property. The material terms contained therein are: (i) payment of a further amount of Rs.6,25,000/- by the purchaser on or before 15.08.1995; (ii) execution of the sale deed on or before 15.08.1997; (iii) measurement of the land within six months; (iv) sale to be completed according to the actual area found on measurement; (v) supply of

Record of Rights and revenue papers; (vi) cooperation by the defendant for obtaining necessary permissions, if required; (vii) declaration that the property was free from encumbrances.

40) It is well settled that the nomenclature of a document is not decisive of its legal character. Whether a document amounts to a concluded contract depends on the parties' intention as gathered from the document as a whole. Equally well settled is the principle that for an agreement to be specifically enforced, there must be consensus ad idem regarding all essential terms of the transaction. If material aspects are left to future determination or if the document merely records an intention to enter into a future agreement, it cannot be treated as a concluded contract.

41) Applying these settled principles to Exh.54, I am unable to accept the contention of the plaintiff that the document itself constitutes a final agreement for sale. The reasons for arriving at this conclusion are as follows:

A) The document indicates an incomplete stage of the transaction :

42) The contents of Exh.54 reveal that the parties had not arrived at a final and complete arrangement regarding the proposed transaction. Exh. 54 records certain preliminary terms and conditions and also provides for several future acts to be performed before the transaction could proceed further. The intention reflected from Exh.54 is not that the parties had finally concluded the agreement for sale, but that they intended to proceed towards such an agreement after completion of the necessary requirements.

B) Consideration was not finally settled and paid :

43) Exh.54 records receipt of an amount of Rs.19,101/- as advance and further provides that earnest money of Rs.6,25,000/- would be paid before 15/08/1995. The fact that a substantial amount was still to be paid subsequently shows that the financial aspect of the proposed transaction had not reached finality on the date of execution of the document. The payment mentioned in Exh.54 only indicates an initial arrangement and cannot, by itself, establish that the parties had concluded the final agreement for sale.

C) Subject matter of transaction was not finally determined :

44) Exh.54 specifically provides that measurement of the suit property would be carried out within six months and that only the area found as per measurement would be the subject matter of sale. Thus, the exact extent of land intended for transfer depended on a future event. When the extent of the property itself remains subject to future determination, the transaction cannot be said to have attained finality.

D) Further formalities were conditions for future agreement :

45) Exh.54 contains provisions regarding production of revenue records, preparation of layout, obtaining signatures and consent on documents, and removal of possible objections. These clauses indicate that the parties contemplated further negotiations and compliance before arriving at a final agreement. Such conditions are not merely acts of performance under an existing, concluded contract; rather, they show that the transaction was still in its preliminary stage.

E) Future purchase contemplated under the document:

46) Exh.54 states that the purchase of the entire agricultural land was to be completed by 15/08/1997. The fixing of a future completion date, coupled with the requirement for measurement and other formalities, demonstrates that the parties had not yet entered into a final, concluded agreement for sale. The document only indicates an intention to complete the transaction in future.

F) Absence of final consensus on all essential terms :

47) For a concluded agreement to sell, the parties must have reached final consensus regarding all essential aspects of the transaction. In Exh.54, certain material aspects were left dependent on future events, including the final extent of the land, the completion of financial obligations, and the fulfilment of other conditions. Therefore, the document lacks the certainty and finality required to constitute a concluded agreement to sell.

48) Considering the contents of Exh.54 as a whole, I find that Exh.54 does not represent a concluded agreement to sell. The document merely records a preliminary understanding or an arrangement expressing the parties' intention to enter into an agreement for sale upon the fulfilment of further conditions and the completion of subsequent formalities.

49) Exh.54 undoubtedly records certain clauses that leave the sequence of obligations uncertain. The clause relating to the supply of the Record of Rights provides that the documents were to be supplied before the execution of the agreement. However, the document itself does not specify the date on which such a formal agreement was to be executed. Consequently, the stage at which the obligation to furnish title documents was to arise is left uncertain.

50) Even assuming that Exh.54 embodies an agreement between the parties capable of being acted upon, the plaintiff was still required to establish compliance with the essential conditions thereof and continuous readiness and willingness to perform his obligations. The entitlement to specific performance therefore primarily depends on the plaintiff's conduct.

RECIPROCAL PROMISES IN EXH.54 :

51) The principal contention advanced on behalf of the plaintiff is that the defendant committed the first breach of the contract by failing to furnish the Record of Rights and title documents and, therefore, the plaintiff was justified in withholding payment of Rs.6,25,000/-. This contention requires careful consideration.

52) Exh.54 casts obligations upon both parties. The purchaser was required to pay a further sum of Rs. 6,25,000/- on or before 15.08.1995, whereas the defendant was required to furnish the Record of Rights, produce relevant revenue papers, and extend necessary cooperation for the completion of the transaction.

53) These obligations are like reciprocal promises governed by Sections 51 to 54 of the Indian Contract Act, 1872. The rights and liabilities of the parties must therefore be determined having regard to the sequence in which those promises were intended to be performed.

54) Section 52 of the Contract Act provides that where the contract expressly fixes the order of performance of reciprocal promises, they are required to be performed in that order. If no order is expressly fixed, the order must be gathered from the nature of the transaction.

55) In the present case, Exh.54 expressly stipulates that the plaintiff was required to pay Rs.6,25,000/- on or before 15.08.1995. This is the only obligation under the document for which a definite date has been prescribed.

56) On the other hand, although the document obliges the defendant to furnish the revenue record and title papers, it does not prescribe any specific date for the performance of that obligation. The relevant clause merely states that such documents would be supplied before execution of the formal agreement or sale deed. The document itself is silent as to when such a formal agreement was to be executed.

57) Thus, the obligation to pay Rs.6,25,000/- is certain both as to time and performance, whereas the obligation relating to production of title documents is not linked with any definite date.

58) In these circumstances, I am unable to accept the submission that payment of Rs.6,25,000/- was conditional upon prior production of title documents. Had the parties intended to make the payment dependent upon such production, Exh.54 would have expressly so provided.

59) A Court cannot rewrite the contract by importing conditions which the parties themselves have not incorporated. Consequently, the plaintiff cannot justify his admitted failure to pay Rs.6,25,000/- by alleging that the defendant had not first supplied the Record of Rights or other revenue documents.

60) Even assuming that the defendant omitted to furnish certain documents, such omission would not dispense with the plaintiff's obligation to establish that he was ready and willing to perform the only obligation specifically required to be performed

within a fixed time. The plea that the defendant committed the first breach cannot, therefore, be accepted.

READINESS AND WILLINGNESS :

61) Even assuming that Exh.54 is capable of being construed as an enforceable agreement for sale, the plaintiff cannot succeed unless they satisfy the mandatory requirement contained in Section 16(c) of the Specific Relief Act, 1963.

62) It is well settled that the relief of specific performance is discretionary. A plaintiff seeking such relief must not only plead but also prove that he has continuously remained ready and willing to perform his part of the contract from the date of the agreement until the passing of the decree.

63) The expression "readiness" refers to the financial ability of the plaintiff to perform the contract, whereas "willingness" relates to his conduct demonstrating a genuine intention to complete the transaction. Both ingredients must coexist throughout the relevant period. The burden of proving these essential requirements lies entirely upon the plaintiff. Mere averments in the plaint or oral assertions made during trial are not sufficient. The Court must examine the parties' entire conduct in light of the surrounding circumstances.

64) In the present case, Exh.54 specifically required the plaintiff to pay Rs.6,25,000/- on or before 15.08.1995. Admittedly, the amount was never paid within the stipulated period.

65) The plaintiff contends that Wasudeo (PW-1) approached the defendant with the said amount, but that the defendant refused to

accept it. This assertion is unsupported by any contemporaneous evidence. No notice was issued immediately after the alleged refusal was produced. No receipt acknowledging tender of the amount has been placed on record. There are no account books, bank statements, withdrawal slips or any documentary material indicating that the plaintiff/Wasudeo (PW-1) had arranged the requisite funds before the stipulated date. Significantly, no independent witness has been examined to prove that any attempt was made to tender Rs.6,25,000/- to the defendant.

66) If the plaintiff/Wasudeo (PW-1) had genuinely approached the defendant with such a substantial amount and the defendant had refused to accept it, ordinary human conduct would require the plaintiff to immediately record such refusal by issuing a written communication or adopting some other contemporaneous mode of preserving evidence.

67) The complete absence of such material creates serious doubt regarding the plaintiff's version. Mere oral statements made long after the institution of the suit cannot discharge the statutory burden cast upon the plaintiffs under Section 16(c) of the Specific Relief Act.

68) Learned Advocate for the plaintiff strongly relied upon the fact that during the pendency of the proceedings, the plaintiff deposited the entire balance consideration pursuant to the orders passed by the Hon'ble High Court.

69) This circumstance undoubtedly establishes that on the date of deposit, the plaintiff possessed the financial capacity to deposit the amount. However, the issue before the Court is not

whether the plaintiff possessed funds years later. The question is whether they were ready and willing to perform the contract on the date fixed under Exh.54 and continuously thereafter.

70) Readiness and willingness must exist throughout the subsistence of the contract. It cannot be established retrospectively by subsequent events. A deposit made several years after the stipulated date, pursuant to judicial directions, cannot cure the earlier default or retrospectively establish compliance with Section 16(c). The subsequent deposit, therefore, does not materially advance the plaintiffs' case.

71) The plaintiff has also sought to justify his conduct by contending that the defendant failed to remove the tenancy entry appearing in the revenue record. Even assuming that such an entry existed and that the defendant had undertaken to have it removed, the plaintiff was still required to establish his own readiness and willingness to perform the contract. The law does not permit a plaintiff seeking specific performance to rely solely upon the alleged default of the defendant while remaining unable to prove his own continuous compliance with the statutory requirement.

72) Upon an overall appreciation of the evidence, I am satisfied that the plaintiff has failed to establish either his financial readiness or his genuine willingness to perform the contract within the stipulated period.

73) The mandatory requirement contained in Section 16(c) of the Specific Relief Act having not been satisfied, the plaintiff is not entitled to the discretionary relief of specific performance.

APPRECIATION OF ENTIRE EVIDENCE :

74) The principal foundation of the plaintiff's case is Exh.54. Even assuming that the said document is capable of being acted upon as an agreement for sale, the plaintiff was still required to prove that he had continuously remained ready and willing to perform his part of the contract. As discussed earlier, the evidence on record falls short of satisfying this statutory requirement.

75) Equally significant is the manner in which the plaintiff has sought to prove the transaction. The original plaintiff, who is alleged to have personally negotiated the transaction, entered into the agreement, paid the earnest amount and remained ready and willing to complete the sale, has not entered the witness box.

76) The negotiations preceding Exh.54, the circumstances in which it came to be executed, the availability of funds, the alleged tender of Rs.6,25,000/-, and the plaintiff's continuous readiness and willingness are all matters within the exclusive personal knowledge of the original plaintiff. Ordinarily, these facts could have been proved in the best possible manner only through his own testimony.

77) No satisfactory explanation has been offered for withholding the evidence of the original plaintiff. Instead, the plaintiffs chose to examine their constituted attorney, Wasudeo Khemchandani (PW-1), to prove these material facts.

78) It is well settled that a power of attorney holder is competent to depose in respect of acts performed by him or facts within his personal knowledge. However, he cannot substitute the principal in relation to matters which are exclusively within the principal's knowledge. Readiness and willingness, negotiations

leading to the contract, and the alleged tender of consideration are matters of personal conduct and intention which ordinarily require proof through the testimony of the person concerned.

79) In the present case, Wasudeo (PW-1) has deposed that he was personally present at the time of execution of Exh.54. This assertion, however, does not find support either in the pleadings or in the contemporaneous record.

80) The plaint contains no averment that Wasudeo (PW-1) was present during the negotiations or at the time of execution of Exh.54. The legal notice (Exh.57) issued before the institution of the suit is equally silent in this regard. Even the power of attorney executed in favour of PW-1, nearly one year after Exh.54, does not state that he had witnessed the transaction or possessed personal knowledge thereof. Had Wasudeo (PW-1) in fact been present during such an important transaction, one would reasonably expect that fact to have been specifically pleaded. The complete absence of any such averment renders his statement before the Court an improvement over the pleaded case.

81) It is a settled principle that evidence cannot travel beyond the pleadings. No amount of oral evidence can be looked into on a fact which has not been pleaded. The pleadings constitute the foundation of a party's case, and evidence adduced in the absence of such foundation cannot ordinarily be accepted to establish a material fact.

82) Consequently, the statement of Wasudeo (PW-1) that he personally witnessed the execution of Exh.54 cannot be treated as

substantive evidence proving the transaction. The omission is not merely procedural; it goes to the root of the credibility of the witness.

83) Learned Advocate for the plaintiff contended that the testimony of Wasudeo (PW-1) deserves acceptance because, during the pendency of the proceedings, he acquired rights in the subject matter of the suit as an assignee and thereby stepped into the shoes of the original plaintiff. This submission does not merit acceptance.

84) The subsequent assignment of rights may enable the assignee to prosecute the proceedings, but it does not retrospectively enhance the evidentiary value of testimony already recorded. The credibility of a witness must be assessed with reference to the pleadings, the contemporaneous documents and the circumstances existing when the evidence was given. A subsequent acquisition of an interest in the litigation cannot cure omissions in the pleadings, validate an improved version introduced at trial, or substitute for the testimony of the person with direct knowledge of the transaction.

85) The evidence of Wasudeo (PW-1) must therefore stand or fall on its own merits. For the reasons already recorded, it does not inspire sufficient confidence to establish the material facts which the plaintiff was required to prove.

86) The failure of the original plaintiff to enter the witness box assumes considerable significance. Where a party having special knowledge of the material facts abstains from giving evidence without satisfactory explanation, the Court is entitled to draw an adverse inference under Section 114 illustration (g) of the Indian Evidence Act, 1872, that the evidence, if produced, would not have supported

that party's case. In the facts of the present case, such an adverse inference is fully justified.

87) Another circumstance which weakens the plaintiffs' case is the non-examination of Kishorbhai Dakshine, who is alleged to have acted as the broker through whom the transaction was negotiated. The note appended to Exh.54 also refers to brokerage, thereby indicating his involvement in the proposed transaction.

88) If the plaintiff's version is accepted, Kishorbhai Dakshine was an independent witness to the negotiations and could have thrown considerable light upon the circumstances in which Exh.54 came to be executed. His testimony would have been of material assistance in resolving the dispute. Surprisingly, he has not been examined. No explanation has been offered for withholding this material witness.

89) Though non-examination of a particular witness is not invariably fatal, where the witness is independent, available, and capable of proving the central facts in issue, the Court is entitled to take such omission into account while appreciating the evidence as a whole.

90) Learned Advocate for the plaintiff placed reliance upon the admissions made by the defendant during cross-examination. Those admissions undoubtedly establish the execution of Exh.54 and the receipt of Rs.19,101/-. However, they do not relieve the plaintiff of his independent burden to prove continuous readiness and willingness, which is a mandatory requirement under Section 16(c) of the Specific Relief Act and the real character of Exh.54.

91) Admissions regarding execution of the document cannot substitute for proof of a statutory condition precedent for the grant of specific performance. Even where the agreement is admitted, the plaintiff must independently establish his entitlement to the equitable relief claimed.

92) Having considered the documentary evidence, the oral testimony of the witnesses and the above discussion and reasons, I find that the plaintiff has failed to establish the essential requirements for the grant of the discretionary relief of specific performance.

CONSIDERATION OF THE PRINCIPAL CONTENTIONS OF THE APPELLANTS :

93) The learned Advocate appearing for the plaintiff/appellant addressed elaborate arguments and, in support thereof, filed six booklets of documents and written submissions.

Booklet No.1 (Exh.50): Short Notes of Arguments along with Exhibited Documents :

94) This booklet comprises 286 pages, including 125 pages of written submissions. A substantial part of the arguments contained therein has already been dealt with in the foregoing discussion. Most of the submissions are repetitive in nature and merely reiterate the contentions already considered.

Booklet No.2 (Exh.51): Concluded Contract :

95) This booklet comprises 309 pages and contains sixteen judicial precedents. The plaintiff has contended that the agreement in question constitutes a concluded contract, which, according to him, the defendant admitted during cross-examination.

96) The ratio emerging from the judgments relied upon is that the nomenclature of a document is not determinative of its legal character; rather, its contents and the intention of the parties determine its true nature. A mere reference to the execution of a formal agreement in future does not necessarily prevent the existence of a binding and concluded contract between the parties. Where the essential terms of the contract, such as the identity of the parties, description of the property, consideration, and the proposed date of execution of the sale deed, are settled, the contract may be regarded as concluded. In essence, the judgments deal with the principles governing the determination of whether an agreement constitutes a concluded contract.

97) There is no dispute regarding the legal principles embodied in Sections 2 and 10 of the Indian Contract Act, 1872, or the law laid down by the Hon'ble Supreme Court in the decisions relied upon. The said principles have already been considered and discussed at the appropriate stage of this judgment.

Booklet No.3 (Exh.52): Sequence of Performance of Obligations by the Parties :

98) This booklet comprises 172 pages and includes nineteen judicial precedents. The judgments primarily deal with reciprocal obligations of the buyer and seller under a contract for sale. The principles laid down therein are that suppression or withholding of material documents relating to the transaction amounts to fraudulent conduct and that where the defendant fails to furnish the documents of title within the stipulated period, the corresponding obligation of the purchaser to complete the transaction does not arise.

99) In substance, the judgments relate to the sequence of reciprocal performance and the legal consequences arising from non-performance by either party. These settled principles have already been discussed while considering the evidence and the issues involved in the present appeal.

Booklet No.4 (Exh.53): Power of Attorney :

100) This booklet comprises 131 pages, including twelve judicial precedents relating to the evidentiary value of testimony given by a power-of-attorney holder.

101) The judgments relied upon lay down that where a party does not enter the witness box and instead examines his duly authorised attorney, no adverse inference can be drawn solely on that ground, provided the attorney is personally acquainted with the facts of the case and is competent to depose thereto. The appellant has relied upon these decisions to contend that the evidence of Wasudeo (PW-1), the power-of-attorney holder, is reliable and trustworthy. This issue has already been examined and dealt with in the preceding discussion.

Booklet No. 5: Synopsis of Subsequent Events During Pendency of the Appeal :

102) This booklet comprises 136 pages, including a synopsis running to seven pages. The appellant has pointed out certain subsequent developments, namely that an amount of Rs.30,33,899/- was deposited on 25.11.2005, the present value whereof is stated to be approximately Rs.10 crores. It is further contended that the plaintiff has complied with all the obligations arising under Exh.54

and, therefore, the issue of readiness and willingness does not survive for consideration.

103) It has also been pointed out that, during the pendency of the appeal, both the plaintiff and the defendant expired and their respective legal representatives have been brought on record. It is further stated that the power-of-attorney holder, Wasudeo (PW-1), has subsequently become a co-plaintiff. The appellant has also brought on record that the land admeasuring 0 H. 12004 R, forming part of the suit property, has been acquired by the Joint Deputy Collector.

104) It is further contended that the plaintiff continues to be ready and willing to purchase the suit property in its existing condition, subject to all existing obligations, and is therefore entitled to the relief of specific performance, including partial specific performance, in accordance with the applicable provisions of the Specific Relief Act. All these subsequent events have already been discussed in appropriate places.

Additional Compilation (Exh.76) :

105) Apart from the aforesaid booklets, the appellant has also filed an additional compilation at Exh.76 comprising 114 pages. The said compilation contains extracts of the relevant provisions of the Indian Contract Act, 1872 and the Indian Evidence Act, 1872. The legal propositions canvassed therein have already been considered and dealt with at the appropriate places in this judgment.

106) It is pertinent to note that there is substantial overlap in the submissions contained in the various compilations. Many of the contentions are repetitive and merely restate the same propositions in different forms. As noted earlier, the substance of the arguments

advanced on behalf of the plaintiff has already been considered in discussing the issues for determination. Likewise, there is no dispute about the settled principles of law laid down in the decisions relied upon by the plaintiff. The applicability and effect of those principles have been examined in the context of the facts and evidence on record while deciding the present appeal.

107) The plaintiff has invoked Section 12 of the Specific Relief Act and has pleaded that he is ready and willing to purchase the suit property in its existing condition, including the subject of the right of a tenant. However, such a plea does not advance a plaintiff's case.

108) Section 12 deals with the specific performance of part of a contract. Its application presupposes the existence of a valid, concluded and enforceable contract between the parties. The provision does not create an independent right to claim specific performance where no agreement has been concluded.

109) In the present case, I have already held that the transaction between the parties did not mature into a concluded contract. Once it is found that there was no concluded contract, there remains no contractual obligation capable of being specifically enforced.

110) The totality of the above discussion leads me to conclude that the findings recorded by the learned Trial Court are based upon a proper appreciation of the evidence and settled principles of law. They neither suffer from perversity nor disclose any error of law warranting interference in the exercise of appellate jurisdiction under Section 96 of the Code of Civil Procedure. Accordingly, Point Nos. (i) to (iii) are

answered against the plaintiff and in answer to point No. (iv), I pass the following order:-

ORDER

1. Regular Civil Appeal No.196/2015 is dismissed.
2. The Judgment and Decree dated 10.03.2005 passed by the learned Joint Civil Judge (Senior Division), Amravati, in Special Civil Suit No.257 of 1996 are hereby confirmed.
3. In the facts and circumstances of the case, there shall be no order as to costs.
4. The Record and Proceedings be transmitted to the Trial Court forthwith.
5. Decree be drawn accordingly.

Dictated and pronounced in open Court.

PREMKUMAR PUNAMCHAND SHARMA

Digitally signed by PREMKUMAR PUNAMCHAND SHARMA
Date: 2026.06.30 16:46:17 +0530

(P. P. Sharma)
District Judge-3
Amravati.

Date: 30-06-2026.

CERTIFICATE

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

Name of the Stenographer:	J. K. Fartode,
Court:	P. P. Sharma,
	District Judge-3 & A.S.J., Amravati
Date:	30-06-2026
Judgment signed by the	
Presiding Officer on:	30-06-2026
Judgment uploaded on:	30-06-2026