

MHBU-1100-0074-2018



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Duration	: Yr. Ms. Ds.
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IN THE COURT OF THE ADHOC DISTRICT JUDGE – 1,
MALKAPUR, DIST. BULDANA.

(Presided over by Rajendrakumar B. Giri)

REGULAR CIVIL APPEAL NO.7/2018

Exh.No.22

Vitthal Ramdas Bawaskar,
Age-36 years,
Occupation – Agriculturist,
R/o.: Borkheda, Tq. Buldana,
Dist. Buldana.

... Appellant.

--Versus--

1. Vijay Devraj Khirolkar,
Age- 46 Years,
Occupation – Service,
R/o.: Plot No.8, Bhairav Nagar,
Tq. Chaurasi, Dist. Surat (Gujarat)

2. Gurubakhsingh Rajaram Naik,
Age- 63 Years,
Occupation – Agriculturist,
R/o.: Borkheda, Tq. Buldana,
Dist. Buldana.

... Respondents.

<i>CLAIM: Appeal under section-96 read with section-46 Rule-1 & 2 of the Code of Civil Procedure.</i>
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Appearance : Ld. Adv. Shri. N. B. Dhoot for the Appellant.

Ld. Adv. Shri. S. D. Rawat for the Respondents.

-: J U D G M E N T :-

(Delivered on this 30th day of July, 2026)

Being aggrieved by the judgment and decree of the Learned Jt. Civil Judge Jr. Division, Malkapur in RCS No.14/2014 dtd. 13/12/2017 for grant of specific performance of contract in favour of plaintiff, the original defendant No.01 preferred the present appeal.

02. The parties are referred as per their original status in the suit, in the present appeal for sake of convenience.

03. The suit property is consisting of portion of plot No.17 admeasuring 1033 Sq.Ft. situated in survey No.158/1/2 at Malkapur (Hereinafter referred as suit property for sake of convenience).

04. The plaintiff approached the Court with contention that the suit property is jointly owned by the defendants. They have agreed to alienate the same in favour of plaintiff and accordingly on 25/07/2012 they have executed an agreement of sale of the suit property in favour of plaintiff for the consideration of Rs.1,81,000/-. The possession of the suit

property was delivered to the plaintiff on the date of execution of agreement of sale. The defendants have agreed to execute the sale deed of the suit property after grant of permission by the sub divisional officer as the said alienation was falling in the category of fragmentation. The defendants have agreed to obtain the said permission at the earliest. After execution of an agreement of sale, the defendants applied for alienation of the suit property to the Sub Divisional Officer Malkapur who has accorded such permission on 14/08/2013. Thereafter, the plaintiff requested the defendants for execution of the sale deed in pursuance of the agreement of sale however the defendants have avoided to comply with his demand. Resultantly, the plaintiff issued the notices dtd. 31/10/2013 and 18/12/2013 claiming specific performance of contract which were not paid any heed by the defendants. Therefore, he prayed for specific performance of contract.

05. The defendant No.01 traversed the case of the plaintiff vide his written statement at Exh.18 and contended that the plaintiff is a money lender carrying out his business without license. As the plaintiff was his relative, in the year 2011 he had obtained loan of Rs.80,000/- from the the plaintiff at the interest rate of 5% per anum. For the purpose of securing the said loan, the plaintiff got executed the nominal agreement of sale with express condition to cancel it on repayment of loan amount. The

defendant No.01 executed the said agreement under the faith on the plaintiff and assurance given by him. He had repaid all the loan amount. In spite of such fact, the plaintiff did not cancel the agreement and misused it for filing the present suit. After repayment of Rs.80,000/-, he had claimed return of document of agreement of sale which was avoided by the plaintiff and he proceeded to file the present suit with these contentions, he prayed for dismissal of the suit.

06. The defendant No.02 remained absent in spite of service of summons therefore suit was set exparte against him.

07. The Learned Trial Court, framed issues at Exh.20. By relying on the agreement of sale dtd.25/04/2012 and the evidence of plaintiff demonstrating his readiness and willingness to perform the contract, the Learned Trial Court decreed the suit.

08. While assailing the judgment and decree of the Learned Trial Court, in the present appeal, the learned counsel for original defendant No.01 submitted before the Court that the Learned Trial Court failed to appreciate the facts of the case according to the law governing the same. The Learned Trial Court failed to consider that the grant of specific performance of contract is a discretionary relief. The incapacity of the plaintiff to pay the consideration amount of the agreement as well as the

absence of delivery of possession of the suit property in pursuance of agreement, was disregarded by the Learned Trial Court. According to him, the findings of the Learned Trial Court are not tenable on facts as well in law and therefore he prayed for appropriate interference in the decree by this court.

09. The Learned counsel for original plaintiff / respondent supported the judgment and decree and prayed for dismissal of the appeal.

10. Considering the rival contentions of both the parties following points arise for my determination to which I record my findings thereon for reasons to follow. :-

Sr. No.	Points for determination	Findings
01.	Whether the plaintiff proves that, the defendants have executed an agreement of sale of the suit property dtd. 25/04/2012 in favour of plaintiff ?	Yes.
02.	Whether plaintiff was ready and willing to perform his part of contract ?	Yes.
03.	Whether plaintiff is entitled for decree of specific performance of contract as claimed ?	Yes.

04.	Whether the judgment and decree of the Learned Trial Court deserves interference ?	No.
05.	What order and decree ?	As per final order.

REASONS

11. Heard learned counsel for appellant / original defendant and the plaintiff / respondent.

12. In order to establish his case, the plaintiff has relied upon his own evidence besides the evidence of PW-2 Sopan Nivrutti Narkhede, a scribe of the agreement dtd. 25/07/2012. He has produced the documentary evidence consisting of the 7/12 extract of the suit property, agreement of sale, the order of SDM, notices from Exh.28 to 39.

13. The defendant countered the case by examining himself as DW-1 at Exh.48 and DW-2 Pramod Gavali at Exh.50.

AS TO POINT NOS.01 TO 04 -

14. All these points are taken together for discussion, due to sake of convenience.

15. Both parties have reiterated their respective

pleadings in their evidential affidavits. In substance, the plaintiff stated in his evidence that the defendants have agreed to alienate the suit property in his favour for the consideration of Rs.181000/- in pursuance of which they have executed a notarized agreement of sale dtd.25/07/2012 Exh.36. He had paid the consideration amount to the defendant on the day of execution of agreement of sale. They have delivered the possession of the suit property in his favour and agreed to execute the sale deed after the due permission / sanction from the concerned Sub Divisional Officer as the suit property was a fragment of land. He had also examined the PW-2 scribe who had stated about writing and execution of the agreement of sale Exh.36.

16. The plaintiff stoutly denied that the transaction was a money lending transaction and not an agreement of sale. In this background, the defendant No.01 as DW-1 has specifically admitted his signature on the agreement of sale Exh.36. He specifically stated that he is not having any document / material to show that the agreement was executed in pursuance of the money lending transaction. In fact, he had specifically stated that he has no knowledge about the nature of the suit and the demands of the plaintiff. He has feigned complete ignorance about either execution of agreement of sale or about the money lending transaction.

17. A conspectus reading of evidence of all the witnesses produced on record reveal that the plaintiff did succeed in proving the due execution of agreement of sale Exh.36 and payment of full amount of consideration in pursuance of sale. A perusal of the agreement of sale Exh.36 goes to reveal that sale deed of the suit property could not be executed for want of sanction from the competent authority as the suit property was a fragment of land. Since the full amount of consideration was paid by the plaintiff on the date of agreement of sale itself, there was nothing remained to be performed by the plaintiff. It is also clear from record that after the grant of sanction by the competent authority, the defendants have avoided to execute the sale deed.

18. For the reasons stated above, it can be discerned from the record that not only the agreement of sale was proved by the plaintiff but also he was ready and willing to perform his part of the contract. The issuance of notices by him to the defendants claiming such performance is demonstrative of such fact. Even though the defendant contested the claim by raising the theory of money lending, it is neither substantiated by the oral evidence nor by any material brought on record from the evidence of plaintiff.

19. The Learned Trial Court did notice the pleadings and

appreciated the evidence of both the parties in proper perspective and concluded for grant of specific performance in favour of plaintiff. There is no error apparent on record either on facts or in law and therefore the decree need not be interfered with by this court.

20. For the above noted reasons, I answer point Nos.1 to 3 in affirmative and 4 in negative and proceed to pass following order. -

ORDER

- (1) RCA No.7/2018 is dismissed with cost.
- (2) Decree be drawn up accordingly.
- (3) The record and proceedings be returned to the Learned Trial Court.
- (4) Inform the Learned Trial Court accordingly.

(Dictated and pronounced in open court)

Malkapur.

Date : 30/07/2026.

(R. B. Giri)

Adhoc District Judge - 1,
Malkapur.

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CERTIFICATE

I certify that this order P.D.F. uploaded is a true and correct copy of original signed order.

Name of Court	: Ad-hoc Distirct Judge – 1 & Additional Sessions Judge, Malkapur.
Name of Stenographer	: Mr. V. S. Jadhav. (Jr. Clerk)
Date of order	: 30.07.2026
Date of signed on order by Judicial Officer	: 30.07.2026
Date of Uploading	: 31.07.2026