

# Exh.16

नेवासा येथील सिविल जज कार्यालय (कानून) यांचे  
सहाय्यकार्यालय.

सं.सं.नं.  
362/2025

वादी  
दरम्यान नारायण कुंभार  
प्रतिवादी  
आठव्या नं. सिविल जज कार्यालय  
नेवासा

पुस्तिका

महोदय,

आ काही वादी नफे सावधाने द्याव्यात असे  
ते साबित पाहिले.

- ① 2016 (2) MHLJ 656
- ② 2008 (2) MHLJ 819
- ③ 2021 (4) ABR 159
- ④ 2008 (6) M.M.R. 327 & 327

येथील पुस्तिका द्याव्यात सावधाने  
ची असे.

Y. K. Kulkarni

वादी वकील.

नेवासा.

तारीख- 21/01/2026

Order

Seen & filed

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by SANDHYA  
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656

MILIND vs. AJAY

[2016(2) Mh.L.J.]

## TEMPORARY INJUNCTION : JUSTIFIABILITY OF

*(A. P. Bhangale, J.)*

MILIND s/o MADHUSUDAN ALSUNDEKAR

*Appellant.*

vs.

AJAY s/o PRABHAKAR RAWAT

*Respondent.*

**Civil Procedure Code, O. 39, RR. 1, 2 and Specific Relief Act (47 of 1963), S. 16(c)** — *Temporary injunction — Grant of — Suit for specific performance of contract to execute sale deed of suit property — Substantial amount has been paid out of agreed consideration as per agreement — Apprehension of plaintiff that defendant is likely to create third party interest so as to defeat claim of plaintiff in pending suit — In facts and circumstances, defendant is restrained from creating third party interest or alienating suit property in any manner till decision of suit — Impugned order of trial Court refusing to grant temporary injunction modified accordingly. (Paras 3 and 4)*

Appeal Against Order No. 121 of 2014 decided on 1-7-2015. (Nagpur)

For appellant : *Mrs. R. S. Sirpurkar*

For respondent : *P. A. Gode*

**ORAL JUDGMENT** :— Heard. **ADMIT.** By consent of learned counsel appearing for both the parties the matter is taken up for final hearing.

2. The appellant is aggrieved by refusal of grant of temporary injunction in the pending Special Civil Suit No. 10 of 2014. The application was preferred under Order XXXIX, Rules 1 and 2 read with section 151 of the Code of Civil Procedure for grant of temporary injunction to restrain the defendant from selling, transferring, mortgaging or creating any third party interest in the suit property till the final decision of the suit.

3. It appears that the substantial amount in the sum of ₹ 10.00 Lakhs has been paid out of agreed consideration of ₹ 19.00 Lakhs as per agreement whereby the defendant was called upon to perform part of the contract and execute the sale deed upon payment of entire consideration amount. The plaintiff has apprehension that the defendant is likely to create third party interest so as to defeat the claim of the plaintiff in the pending suit. This apprehension of likelihood of creating third party interest itself sufficient in the accompanying facts and circumstances that there was an agreement to sell suit property existing which averred that consideration is in the sum of ₹ 19.00 Lakhs and substantial amount of ₹ 10.00 Lakhs was already paid. When such averments are made before the trial Court, the trial Court should have protected the property from changing its hands by the defendant pending disposal of the suit. The defendant could have been restrained from creating third party interest till trial Court decides the suit on merits. That being so, the impugned order needs modification.

4. In that view of the matter, the impugned order is set aside. The defendant is restrained from creating third party interest or alienating suit property in any manner till decision of the suit. The parties shall appear and cooperate with the trial Court for expeditious final disposal of the pending suit. The trial Court shall endeavour to dispose of the suit finally as early as possible. Hence, the order :

**ORDER**

The appeal against order is allowed accordingly.

There shall be no order as to costs.

*Appeal allowed.*

②

2008(2) Mh.L.J.]

SHAMRAO vs. KAKASAHEB

819

CIVIL PROCEDURE CODE, ORDER 39, RULES 1 AND 2 :  
GRANT OF TEMPORARY INJUNCTION

(S. B. Deshmukh, J.)

SHAMRAO GANPAT CHINTAMANI

*Petitioner.*

vs.

KAKASAHEB LAXMAN GORDE

*Respondent.*

**(a) Civil Procedure Code, O. 39, RR. 1 and 2 — Temporary injunction**  
— *Grant of — At the stage of temporary injunction Court can refer to documents which are produced on record without formal proof.*

Prima facie case, balance of convenience and irreparable loss are the factors which require to be taken into consideration by the Court while considering the application for temporary injunction. At the stage of temporary injunction, Court can refer to documents which are produced on record without formal proof. At that time of the trial Court has to take into consideration the documents which are established in accordance with the provisions of the Indian Evidence Act and proved on formal proof. While considering the prima facie

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W. P. No. 324 of 2006 decided on 19-10-2007. (Aurangabad)

case, in case of temporary injunction the Court has to record a finding as to whether the plaintiff has established prima facie possession over the suit property. In the present case, the execution of the sale deed dated 23-4-2004 is admitted by defendant which recites delivery of possession of the suit property. This circumstance needs to be considered while considering the prima facie case. The finding on possession is recorded by the Courts below relying upon two affidavits by the adjoining neighbours. It is pertinent to note that affidavit is not the only source for the Court to record a finding regarding prima facie case, balance of convenience and irreparable loss. The Courts have to consider the material on record in its entirety. The affidavits which are filed on record, have to be read in consonance with the pleadings of the plaintiff, pleadings of the defendant, document of sale, certification of the mutation and other material which is produced on record. The Courts below have committed jurisdictional error while accepting the affidavit in the case on hand. The plaintiff has established that in case of refusal of the injunction, he would be put to irreparable loss. In this view of the matter, order passed by the first Appellate Court needs to be quashed and set aside by allowing application till disposal of the suit. 1983 Mh.L.J. 284, Rel. (Paras 9, 13 and 16)

(b) **Maharashtra Land Revenue Code (41 of 1966), S. 157** — *Correctness of entry in record of rights and register of mutations — Presumption in that respect stands in favour of the mutations which are certified — This presumption, however, is rebuttable.* (Para 11)

(c) **Constitution of India, Art. 227** — *Scope — Failure to render the necessary findings to support order would be a jurisdictional error likely to be necessary — Where the orders passed by the trial Court as well as the first Appellate Court suffer from jurisdictional error, power under Art. 227 can be exercised and upset the orders passed by the Courts below.* (Paras 13 and 14)

(d) **Maharashtra Land Revenue Code (41 of 1966), SS. 149 and 154** — *Intimation of acquisition of rights — Document being registered sale deed, it is the duty of the Sub-Registrar/Registering Officer to inform the transaction to the Talathi as well as to the Tahsildar — It is not an obligation on the part of plaintiff, to report the transaction to the Village Officer or to the Revenue Officer — In case of acquisition otherwise than registered instrument, party has to make a written application to the Village Officer.* (Para 12)

For petitioner : N. K. Kakade and A. N. Kakade

For respondent : S. M. Kulkarni

*List of cases referred :*

1. *Pandurang Ramchandra vs. Murlidhar Shripati, 1993 BCJ 85* (Paras 7, 14)
2. *Kishore Kumar Khaitan vs. Praveen Kumar Singh, (2006)3 SCC 312* (Para 14)
3. *Venkat Dharamji vs. Vishwanath, 1983 Mh.L.J. 284* (Para 15)

**P. C. :**— Heard respective counsel.

2. Rule. By consent, Rule made returnable forthwith and the petition is taken up for final hearing.

3. This petition takes an exception to the judgment and order passed by the learned IV Ad-hoc Additional District Judge, Aurangabad in Misc. Civil Appeal No. 149 of 2005, dated 3-9-2005.

4. The petitioner is the plaintiff and respondent is the defendant in Regular Civil Suit No. 108 of 2005. The suit was filed for perpetual injunction. The suit

has been followed by an application Exhibit 5 for temporary injunction against defendant under Order XXXIX, Rules 1 and 2 of Civil Procedure Code (CPC). The learned Joint Civil Judge J.D. Paithan, initially i.e. on 16-6-2005 directed ad-interim injunction against defendant. Show cause notice with ad-interim injunction was made returnable on 24-6-2005. This application, after hearing the parties, came to be rejected by the trial Court on 16-8-2005. Ad-interim order passed earlier stood vacated. This dismissal of the application Exhibit 5 was challenged by filing Misc. Civil Appeal, which came to be dismissed, after hearing the parties. Said order is questioned in this writ petition.

5. It is alleged by the plaintiff that the plaintiff has purchased the suit property by registered sale deed dated 22-3-2004 from defendant. The property purchased by the plaintiff is to the extent of 40 Ares out of land Gut No. 23, admeasuring 1 hectare and 20 ares. According to the plaintiff, from the date of sale deed, he has been inducted in to the suit property. He refers recital to that effect in the sale deed. According to plaintiff, his name is recorded in record of rights. His possession over the suit property was obstructed on 15-6-2005 and that is how, suit came to be filed with an application for temporary injunction.

6. The defendant, after entering appearance, filed reply to the application Exhibit 5. Copy of the said reply is on record at page 28. After denial, in paragraph No. 10 of the written statement, it is pleaded by defendant that the registered sale deed dated 23-3-2004 is not a document of sale. Said document is executed as a security for the loan raised by defendant. It is further pleaded that defendant was in need of money and plaintiff insisted for execution of the sale deed. Defendant was constrained to execute the document in question. The plaintiff was indulged in illegal money lending. To prevent exposure of his illegal money lending, plaintiff refused to enter into any other agreement. Since, defendant was in need of money, he accepted Rs. 15,000/- and executed sale deed. Oral agreement, according to defendant was agreed by the parties. As per the said oral agreement, within the period of three years, defendant was supposed to return the amount of Rs. 30,000/- and plaintiff was to execute reconveyance / re-sale deed of the property in favour of the defendant. One of the terms of the oral agreement was that possession of the suit property is to remain with defendant. During earlier year of the filing of the written statement, there was good crop of cotton in the suit property. Defendant also received good yield of other crops and has returned Rs. 20,000/- to plaintiff till the filing of the written statement. He also intends to return remaining amount to plaintiff and take back the land as per the said oral agreement. The plaintiff is trying to grab the suit property for a meagre price. The plaintiff has suppressed all these facts and misrepresented this Court, while obtaining ad-interim relief. It is also pleaded that possession of the suit property is with the defendant. It was never handed over to plaintiff. The plaintiff, in collusion with the officers obtained mutation entry in his favour by following illegal procedure. The defendant has applied to the Tahsildar, objecting certification of the mutation. The plaintiff to give counterblast to the defendant, filed this suit. Certification of Mutation Entry No. 851 is illegal and not made by the authority competent to certify the mutation. 7/12 extract of the suit property is wrong and incorrect. Defendant wish to file appeal against the certification of Mutation Entry No. 815. The plaintiff is a plutocrat and trying to grab the suit property. The defendant, except the suit

property, do not have any other source of income. He has accepted Rs. 15,000/- towards loan and said fact is being distorted by the plaintiff. With this pleadings, vacation of ad-interim relief as well as dismissal of the suit was requested. This written statement seems to have been filed on 14-7-2005.

7. The trial Court has relied upon the judgment of this Court reported in the case of *Pandurang vs. Murlidhar, 1993 BCJ 85*. Since the High Court has directed expeditious hearing of the matter, the trial Court seems to be of the opinion that injunction granted needs to be vacated. In paragraph No. 6 of the judgment, the trial Court recorded a finding regarding balance of convenience in favour of the defendant. The trial Court was of the opinion that defendant will suffer irreparable loss, if it is proved that the sale deed is a conditional sale deed. With this finding, the trial Court dismissed the application Exhibit 5 and vacated ad-interim injunction.

8. The first Appellate Court in paragraph No. 6 of the judgment has observed that "While the execution of the sale deed dated 23-2-2004 by respondent in favour of appellant is not disputed, but it is seriously disputed that by said sale deed, possession of the suit land was delivered to appellant." The first Appellate Court took a notice of the affidavit of one of the attesting witnesses on the point of delivery of possession. The first Appellate Court also noted the contention on behalf of the plaintiff that said attesting witness is relative of defendant and purposely supported respondent to defeat the claim of the appellant. The first Appellate Court in paragraph No. 8 has referred to certification of mutation entry dated 20-4-2005, after the period of one year of the sale deed. The first Appellate Court wondered as to for what reason the appellant has not taken steps to mutate his name in the record of rights immediately after the sale deed is not forthcoming on record. The first Appellate Court also observed that no affidavit of adjoining landowner has been filed on behalf of plaintiff in the trial Court. Regarding contention of the defendant that defendant managed the Talathi for recording his name in cultivation column, the first Appellate Court observed that it is very easy to take such a plea making allegations against the Revenue Officer, however, difficult to prove during the trial. The first Appellate Court has also wondered as to why no explanation is coming from the plaintiff for not moving the Talathi or the learned Tahsildar, immediately after the sale deed that he was cultivating the suit land. The first Appellate Court also observed that there is no iota of evidence to show that plaintiff cultivated the suit land or possessed the suit land on the strength of the sale deed. According to first appellate Court, merely recital in the sale deed about delivery of possession in the background that one of the attesting witness is contending otherwise and supporting respondent, creates doubt that actually possession was delivered to appellant.

9. The claim of temporary injunction, made by plaintiff needs to be considered by Court in view of the provisions laid down under Order XXXIX, Rules 1 and 2 of Civil Procedure Code. Order XXXIX, Rule 1 of Civil Procedure Code opens with the wording, "Where in a suit, it is proved *by affidavit or otherwise*, temporary injunction may be granted by the Court." Prima facie case, balance of convenience and irreparable loss are the factors which require to be taken into consideration by the Court while considering the application for temporary injunction. So far material is concerned, the Court can resort to affidavit

filed by the party or otherwise. The expression 'otherwise' refers to various other circumstances. In a given case there may be record of rights, various documents of title or transfer of the property or other circumstances. The consideration by the Court to such material at the stage of considering application for temporary injunction is one aspect of the matter and consideration of these circumstances, at the time of trial is different aspect of the matter. At the stage of temporary injunction, Court can refer to documents which are produced on record without formal proof. At that time of the trial Court has to take into consideration the documents which are established in accordance with the provisions of the Indian Evidence Act and proved on formal proof. In other words, formal proof of the documents, which otherwise is necessary at the time of deciding the suit in that strict sense is not necessary while considering the documents concerned at the time of consideration of the prayer for temporary injunction. Public documents can be considered at the time of temporary injunction as well as at the time of disposal of the suit without formal proof and in view of the provisions of the Indian Evidence Act. While considering the prima facie case, in case of temporary injunction the Court has to record a finding as to whether the plaintiff has established prima facie possession over the suit property. Such possession, again has to be referable, either to the title of the property or some lawful right vested with the plaintiff. After fulfilling the test of prima facie case, the Court has to turn to consider the question of equity between the parties. Irreparable loss to the plaintiff is also material while considering such application for temporary injunction.

10. In the present case, plaintiff claims to have purchased the suit property by registered sale deed dated 23-3-2004. Copy of the document is on record which shows the description of the property and consideration for the transaction as Rs. 30,000/-. This document also refers to delivery of possession by defendant to the plaintiff. This document is subsequently mutated to the record of rights under Mutation Entry No. 851, which is certified by the Circle Inspector on 20-4-2005. It is at this stage, apposite to refer to the pleadings on behalf of the defendant. Defendant has filed written statement. In relation to this document, it is pleaded by defendant in paragraph No. 10 that the document dated 23-3-2004 is executed by defendant. His contention is that it was a loan transaction. Defendant was in need of money, and plaintiff was not having money lending license. Fact remains that execution of the document in question dated 23-3-2004 is admitted and accepted by defendant in the written statement. Pleadings of the parties is significant. At this prima facie stage, pleadings of defendant in relation to admitting the execution of the document dated 23-3-2004 can be considered to be a circumstance strongly against the defendant. I am not oblivious that parties have to lead their evidence in support of their contention at the time of hearing of the suit. The parties are at liberty to lead their evidence in support of their contention and learned Judge while deciding the suit may arrive at the proper conclusion regarding the nature of the transaction. Suffice to say that the execution of the sale deed dated 23-4-2004 is admitted by defendant which recites delivery of possession of the suit property. This circumstance needs to be considered while considering the prima facie case.

11. Maharashtra Land Revenue Code, 1966 holds the field in relation to agricultural lands. Sections 149, 150 and 154 are relevant. Section 149 is in respect of acquisition by succession, survivorship, inheritance, partition,

*purchase*, mortgage, lease, or otherwise and any right as a holder, occupant, owner, mortgage, landlord, Government or tenant of the *land* situated in any part of the State. It is further contemplated that the person concerned shall report *orally* or in writing his acquisition of such rights to the Talathi within three months from the date of such an acquisition and the Talathi shall at once give a written acknowledgment of receipt of such report to the person making it. Section 150 lays down the procedure of maintenance of Register of Mutations and Register of Disputed Cases. Sub-section (6) of section 150 empowers the Surveyor or Revenue Officer not below the rank of Avval Karkun to certify the mutation entry which is not disputed. Otherwise, Circle Inspector is the authority who can certify the mutation entries. From the mutation entry No. 815 in the case on hand, it appears that the notice was issued to defendant who did not raise any objection and that is how said mutation was certified by the Circle Inspector on 20-4-2005. Presumption under section 157 of the Land Revenue Code stands in favour of the mutations which are certified. This presumption, however, is rebuttable. In the case on hand, defendant may adduce evidence at the time of trial for rebutting such a presumption. However, the fact remains that mutation as of today has to be considered in favour of the plaintiff.

12. The first Appellate Court seems to have been swayed away with the certification of the mutation entry after about one year. The first Appellate Court blamed the plaintiff for not moving the authority concerned for certification of the mutation entry. In this context, look to section 154 of the Land Revenue Code is necessary. It provides that intimation of transfer by registering officer, in relation to document purporting to create, assign or extinguish any title to or in charge of land used for agricultural purposes or in respect of which the record of right has been prepared as registered under the Indian Registration Act, be given to the Talathi of the village in which the land is situated and to the Tahsildar in such format and at such times as may be prescribed by the Rules under the Act. The document in the case on hand is a registered sale deed. This fact cannot be disputed. In view of section 154 of the Land Revenue Code, it is in fact the duty of the Sub-Registrar/Registering Officer to inform the transaction in question to the Talathi as well as to the Tahsildar. Thus, it is not an obligation on the part of plaintiff, on the case on hand, to report the transaction to the Village Officer or to the Revenue Officer. Section 149 has to be read with section 154 and conjoint reading shows that in case of acquisition otherwise than registered instrument, party has to make a written application to the Village Officer. Suffice to say that in case of registered instrument, it is a legal obligation on the registering authority. If registering authority commits an error or fails in its duties, citizen like the plaintiff cannot be blamed or made to suffer. The finding of the first appellate Court is thus, suffers jurisdictional error. Any of the Courts below did not refer to the provisions of the Maharashtra Land Revenue Code, despite the fact that they were dealing with the transaction of agricultural land, mutations and record of rights.

13. The finding on possession is recorded by the Courts below against the plaintiff. On examination of the judgments of the Court below, it appears that they have accepted the contention of the defendant relied upon two affidavits by the adjoining neighbours. This material comes in the earlier expression used under Order XXXIX, Rule 1 of Civil Procedure Code that wherein in a suit it is proved by *affidavit*. It is pertinent to note that affidavit is not the only source for

the Court to record a finding regarding prima facie case, balance of convenience and irreparable loss. The Courts have to consider the material on record in its entirety. The affidavits which are filed on record, have to be read in consonance with the pleadings of the plaintiff, pleadings of the defendant, document of sale, certification of the mutation and other material which is produced on record. In my considered view, the Courts below have committed jurisdictional error while accepting the affidavit in the case on hand.

14. Shri Kulkarni, learned counsel for the respondent has placed reliance on the judgment of the learned Single Bench of this Court in the matter of *Pandurang Ramchandra vs. Murlidhar Shripati*, 1993 BCJ 85. I have perused the said judgment. The facts and pleadings of the parties are not reflected. The judicial pronouncement is a good judgment in the facts obtaining in the case wherein the judgment is delivered. The facts in the present case, I have noted in foregoing paragraphs extensively. In this view of the matter, the judgment cited by the learned counsel for the respondent is of no assistance to the respondent.

Shri Kulkarni, learned counsel has also invited my attention to the judgment of the Apex Court in the case of *Kishore Kumar Khaitan vs. Praveen Kumar Singh*, (2006)3 SCC 312. I have perused the facts from paragraph Nos. 2 to 5. Apart from this, the Apex Court in paragraph No. 12 of the judgment has considered the scope of Article 227 of the Constitution of India. In paragraph No. 13, the Apex Court considering the scope of Article 227 and exercise thereof, observed that failure to render the necessary findings to support its order would also be a jurisdictional error likely to correction. In my view, the orders passed in the case on hand by the trial Court as well as the first Appellate Court, suffers from jurisdictional error. It is a fit case wherein this Court can exercise the power under Article 227 of the Constitution of India and upset the orders passed by the trial Court as well as the first Appellate Court.

15. At this stage, it is apposite to refer to the judgment of the learned Single Bench of this Court in the case of *Venkát Dharamji vs. Vishwanath*, 1983 Mh.L.J. 284. In that case, the suit property was allegedly purchased by the plaintiff by agreement of sale. Said document was executed by defendant for the consideration of Rs. 31,590/-. The allegation was that amount of Rs. 20,000/- was paid before the agreement to respondent No. 1. The agreement recites that on the date of execution of the agreement, the plaintiff has obtained possession. Said agreement was on the stamp paper and written in vernacular. Said agreement had been signed by both the parties. Defendant in that suit, refuses to execute the sale deed and therefore, suit for specific performance was filed. Defendant in that suit, admitted execution of the agreement. However, it was the case alleged by the defendant that the agreement does not refer the true nature of the transaction, but it was an agreement executed only to secure the amount taken by him. It was also pleaded that no agreement of sale as alleged by the plaintiff therein was executed. On the premises of these facts, the learned Single Bench of this Court, in paragraph No. 13 has observed as under:—

“..... However, I am at present inclined to take the view that the agreement of sale is on a stamp paper and this agreement is specifically admitted by the defendant to the extent of execution. In view of the admission of the respondent No. 1 at this stage it would be improper to infer that prima facie the recitals in the agreement are not true....”

I am in respectful agreement with the view taken by the learned Single Bench of this Court in the said case.

16. Having considered the pleadings and material on record, in my view, prima facie case is established by the plaintiff. The plaintiff seems to have been inducted into physical possession of the suit property on the basis of document of sale dated 22-3-2004. From the sale deed in question, it appears that the plaintiff has purchased the suit property for the consideration of Rs. 30,000/-. This fact needs to be considered by way of balance of convenience in favour of the plaintiff. The plaintiff has established that in case of refusal of the injunction, he would be put to irreparable loss. In this view of the matter, order passed by the first Appellate Court needs to be quashed and set aside by allowing application Exhibit 5 till disposal of the suit. The suit is of the year 2005. This suit also needs to be directed to be disposed of expeditiously.

17. In the result, writ petition is allowed. The impugned order is quashed and set aside. The learned Judge seized with the hearing of the suit is directed to decide and dispose of the suit by 31-3-2008.

Observations made in this order are restricted to the application Exhibit 5 and Court concerned shall decide and dispose of the suit on merits and in accordance with provisions of law.

18. Rule made absolute. No order as to costs.

*Writ petition allowed.*

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2021

Chamelibai Baburao Nhavi v. Brijlal Eknath Patil

159

2021 (4) ABR 159  
: AIR Online 2021 Bom 1062  
(AURANGABAD BENCH)  
VIBHA KANKANWADI, J.

Chamelibai Baburao Nhavi and others v. Brijlal Eknath Patil.

Second Appeal No. 416 Of 2020, D/- 9-4-2021.

**Specific Relief Act (47 of 1963), Ss. 20(2)(b), 22(1)(b), 38, 16(1)(c) — Bombay Tenancy and Agricultural Lands Act (99 of 1958), S. 43 — Relief of specific performance of contract and permanent injunction — Entitlement — Plea of plaintiff that predecessor of defendant agreed to sale suit land to him — Defendants denying execution of agreement as well as payment of earnest money by plaintiff — Two notices issued by defendants to plaintiffs, whereby they admitted execution of agreement — Execution of agreement of sale duly proved by plaintiffs — Registered agreement of sale bearing statement about payment of earnest amount — Permission of Sub Divisional Officer required prior to sale of suit property — Predecessor of defendant moved application before competent authority seeking permission, however upon his death defendants changed their stand — Plaintiff always ready and willing to perform his part — Non-grant of permission by authority not fatal for agreement of sale — As, agreement of sale does not amount to sale, so there is no hurdle when person is willing to perform his part of the contract, to grant specific performance — Plaintiff entitled to relief.**

AIR 1964 SC 978, Relied on. (Paras 9, 10, 13)

Cases Referred : Chronological Paras

(2019) 19 Supreme Court Cases 577 7.5  
2009 (1) AIR Bom R (NOC) 42 (null)

8,10,11  
AIR Online 2007 SC 118 8,12  
AIR 2001 BOMBAY 364 7.4,8,10,11  
AIR 1999 BOMBAY 10 7.2  
1995(1) Mh L J 80 7.4,8,10  
1993 Mh L J 1570 7.4,8,10  
1981 SCC OnLine Bom 209 7

AIR 1970 SC 546 7.3,8,10,11  
AIR 1964 SC 978 (Rel. on) 8,11,12

P.R. Katneshwarkar, for Petitioners; Pavan Pawar, Advocate h/f H.P. Randhir, for Respondents.

**JUDGMENT** :— Present appellants are the original defendants and present respondents are the original plaintiffs. Present appellants challenge the concurrent findings in the Second Appeal.

2. Heard learned Advocate Mr. P.R. Katneshwarkar for appellants and learned Advocate Mr. Pavan Pawar holding for learned Advocate Mr. H.P. Randhir for respondent Nos. 1 and 2.

3. Before the rival contentions are considered the background is take a note of, original plaintiffs had filed Regular Civil Suit No.29/2006 before Civil Judge Junior Division, Muktainagar, Dist. Jalgaon for specific performance of contract and permanent injunction. They had come with a case that the defendant No.1's husband and defendant No.2 to 6's father deceased Babu Lahanu Nhavi was the owner of land Gat No.9/1 admeasuring 02 H 64 R and barren land admeasuring 01 H 76 R, that is, in all 04 H 40 R situated at village Purnad, Tq. Muktainagar, Dist. Jalgaon. The said land could not have been sold without obtaining prior permission from the competent authorities. Plaintiffs contended that Babu had entered into agreement, to sell the said suit land to them and a written registered agreement was executed on 27.08.2001 for a consideration of Rs.78,000/-. On the date of the agreement the plaintiffs had paid amount of Rs.55,000/- as earnest to Babu. It was decided that the remaining amount of Rs.23,000/- would be paid at the time of execution of the sale deed. It was also agreed to bring the permission required under Section 43 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "B.T. and A.L. Act") from the competent authority. Plaintiffs further contend that no efforts were made by Babu in his life time to get the said permission, however, at the time of executing the said agreement possession of the land was parted with the plaintiffs by Babu. Each and every time plaintiffs used to make inquiry with Babu

about the permission but he used to avoid by saying that there is no hurry. Babu expired on 21.03.2005 and the land got mutated in the name of defendant Nos.1 to 6. Plaintiffs were ready and willing to perform their part of the contract, that is, by giving remaining amount of Rs.23,000/-. They were ready to get the sale deed executed, and therefore, they asked defendant Nos.1 to 6 to bring the permission, but defendant Nos.1, 3 to 5 changed their statement before the Sub Divisional Officer and stated that permission should not be granted. Under such circumstance, the said application came to be disposed of. Thereafter, defendant Nos.1 and 2 obstructed the possession of the plaintiffs over the suit land on 16.06.2006, and therefore, they filed the suit for specific performance of the contract and permanent injunction.

4. Defendant Nos.1, 2 and 5 filed written statement at Exh.23 and defendant Nos.3, 4 and 6 adopted the said written statement by filing a purnis. All of them have denied the execution of any such document by their predecessor Babu. It is denied that plaintiffs had paid earnest amount of Rs.55,000/- to Babu. It has been contended that plaintiffs lend money to the needy persons, and therefore, Babu had approached the plaintiffs in August, 2021. He demanded amount of Rs.20,000/- on interest, however, as the plaintiffs were not having money lending licence, they got the said document in the form of agreement to sell executed from Babu. The said document was hollow and not to be implemented. Babu had repaid amount of Rs.30,000/-, which was inclusive of the interest amount; yet, plaintiffs demanded amount of Rs.50,000/- more. Defendant No.1 never applied for permission to sale to Sub Divisional Officer, Bhusawal. That application has been falsely filed by the plaintiffs. The suit property is from the tenancy laws, and therefore, without taking prior permission it cannot be put to sale, and therefore, specific performance cannot be granted.

5. On the basis of these pleadings issues came to be framed. both the parties have led oral as well as documentary evidence on record. After considering the evidence on record the learned Lower Court held that the plaintiffs have proved that Babu had entered

into an agreement to sell on 27.08.2001 and agreed to sale the suit land for a consideration of Rs.78,000/- to the plaintiffs. Plaintiffs have also proved that they had paid earnest amount of Rs.55,000/- to Babu. Plaintiffs were ready and willing to perform their part of the contract, and therefore, they are entitled to get specific performance of the contract. It was also held that prior permission to effect sale is necessary and it should be brought by the defendants. The suit, therefore, came to be partly decreed. It will not be out of place to mention here that during the pendency of the suit defendant No.1 expired and defendant Nos.2 to 7 are her legal representatives. Defendant Nos.2 to 7 were directed to bring the permission from Government within three months from the date of the decree and then by accepting the remaining amount of Rs.23,000/- from the plaintiffs, she should execute the sale deed, in respect of suit land, in favour of the plaintiffs. It was also decreed that if defendants failed to execute the sale deed as directed, then plaintiffs may deposit the remaining amount and get the sale deed executed through Court. The prayer of permanent injunction was rejected.

6. Original defendant Nos.2 to 6 then filed Regular Civil Appeal No.50/2016 before District Judge-3, Bhusawal, Dist. Jalgaon, challenging the said judgment and Decree passed by learned Civil Judge Junior Division, Muktainagar. After hearing both sides the appeal has been dismissed by the learned First Appellate Court. Hence, this Second Appeal.

7. Learned Advocate Mr. P.R. Katneshwarkar appearing for the appellants vehemently submitted that it is not in dispute that the suit property was covered under Section 43 of the B.T. and A.L. Act, that is, land was belonging to the tenant and there was restriction on its transfer. It is also agreeable to the plaintiffs that prior permission was required from the competent authority to sell the suit land. When no such permission was taken, then said tenant or his successors cannot be dictated nor the Collector can be dictated to grant requisite permission. Even the Civil Court has no such jurisdiction to give such directions to the Collector, who is the competent authority under the B.T. and A.L. Act. Both the Courts below

have ignored the position of law concerning Section 43 of the B.T. and A.L. Act. Under such circumstance, when the lands belonging to the tenant are required to be protected, the suit ought not to have been decreed. He has placed reliance on various decisions.

7.1 In *Dnyanoba Sukhdeo Lande and another v. Shirang Mahataraji Dhurwade* decided by this Bench, reported in 1981 SCC OnLine Bom 209. The facts were similar. There was also an agreement that was entered into and it has been observed thus -

“Now, it is well settled that the provisions of section 53-A would not apply to an invalid or a void contract of an agreement of sale. The question in this case is as to whether any transfer in contravention of the provisions of section 50-B will be a valid or a void contract and where a person who is put in possession in pursuance of such a contract is entitled to protect his possession. The answer to such question is positively no. Section 23 of the Indian Contract Act, 1872, lays down that the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or the Court regards it as immoral or opposed to public policy. It further lays down that in each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is, void. Under the land reforms, a protected tenant has been bestowed with a right of ownership in respect of held by him. Section 38-E specifically provides that the ownership of land held by protected tenant which they are entitled to purchase from their landholders in such area under any provision of the Chapter shall stand ‘transferred’ to and vest in the protected tenant holding them and from such date the protected tenant shall be deemed to be the full owner of such a land. Under sub-section (2) of the said section, a certificate in the prescribed form is to be issued. Such a certificate shall be conclusive evidence of protected tenant having become owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein. The legislature by enacting the said provisions intended that the protected ten-

ant should become owner of the land and he should enjoy and take the benefit of such land or which he had been declared owner. A restriction has been imposed on him not to transfer or deliver possession of the land to any one else except with the previous sanction of the Collector. Section 50-B of the Hyderabad Tenancy Act clearly lays down that land purchased by a tenant under section 38-E shall not be transferred by sale etc., without the previous sanction of the Collector. Sub-section (2) further makes it clear that any transfer of such land shall be invalid. If an agreement of sale in respect of a land of which a tenant has been declared an owner, even his possession is transferred under an agreement, it will be deemed to be invalid under sub-clause (2) of the said section. The contract for sale of such land of which the tenant has become the owner will be invalid in view of the provisions of section 23 of the Indian Contract Act, because it contravenes the provisions of section 50-B of the Hyderabad Tenancy Act. It is, therefore, an agreement of sale on which the appellant-defendant relies is illegal by virtue of sub-section (2) of section 50-B of the Hyderabad Tenancy Act and it is, therefore, he is not entitled to the protection of section 53A of the Transfer of Property Act.”

It was clearly observed that a party cannot be allowed to override the provision of auction 50-B by a device such as an agreement of sale and continue in possession thereof claiming right under Section 53-A of the Transfer of Property Act. It would amount to defeating the provisions and, therefore, the said agreement should be declared to be invalid and not enforceable at law. It is submitted here also the provisions of law cannot be defeated and, therefore, the said agreement even if it is accepted that was executed by Babu cannot be put to execution.

7.2 Learned Advocate for appellants has further relied on *Himatrao Ukha Mali and others v. Popat Devram Patil and others*, AIR 1999 Bom 10 : (AIR 1999 BOMBAY 10), wherein also the agreement of the sale of the tenancy land by tenant in 1961, for which the certificate of deemed purchase was issued in 1971, was opposed by the heirs of the tenant, on the ground that the permission of the Collector

under Section 43 of the B.T. and A.L. Act was not obtained; the Court held that the tenant acquired the proper title to the land in 1971; but permission of the Collector was still necessary under Section 43 of the Act, as he had not become the absolute owner of the land. Therefore, the sale by him was ineffective.

7.3 Further, in *Nathulal v. Phoolchand*, 1969 (3) Supreme Court Cases 120 : AIR 1970 SUPREME COURT 546, which was a case from Madhya Pradesh. Tenancy laws creating a similar bar for transfer. It was held that -

“That is is well settled that where by statute property is not transferable without the permission of the authority, an agreement to transfer the property must be deemed subject to the implied condition that the transferor will obtain the sanction of the authority concerned. Hence, *Nathulal* as vendor has necessarily to get the prior sanction of the State Government made under Section 70(4) of the Madhya Bharat Land Revenue and Tenancy Act. This he has to fulfil before he can claim payment from *Phoolchand* notwithstanding the absence of such a clause in the agreement.”

In this case Hon'ble Apex Court contended that there is no sale as it was only an agreement, but then according to the learned Advocate for appellants this proposition will not apply to the facts of the present case. He submitted that Courts cannot interpret those words which are not interpreted by Legislature.

7.4 Further, reliance has been placed on the decision in *Parshuram Kathod Gaikar v. Pandu Mahadu Hard* and another, 1993 Mh L J 1570 and *Lotan Ramchandra Shimpi and others v. Shankar Ganpat Kayasth and others*, 1995(1) Mh L J 80. In both these cases this Court had held that there is complete bar on alienation of the agricultural land in question without the previous sanction of the Collector under Section 43 of the B.T. and A.L. Act. This protection was granted to the tenants/agriculturists who were not only poor but invariably illiterate and, therefore, extremely valuable to all sorts of methods. When the condition precedent is made to obtain the prior permission then such intention of the legislature cannot be allowed to be defeated, by saying that still the permission can be obtained even after the decree of the suit. As regards the law of pre-

cedent is concerned, as it was pointed out that later on this Court in *Balu Baburao Zarole and others v. Shaikh Akbar Shaikh Bhikan and others*, 2001 (3) Bom C R 255 : AIR 2001 Bom 364 has taken a note of earlier decisions and submitted that agreement for purchasing property is not prohibited in view of Section 43 of the Act and no impediment for granting specific performance, subject to grant by Collector. It was submitted that the latest contrary version will not prevail but the earlier decision of this Court would prevail.

7.5 Further reliance on the decision in *Vasant Ganpat Padave (dead) by Legal Representatives and others v. Anant Mahadev Sawant (dead) through Legal Representatives and others* (2019) 19 Supreme Court Cases 577, wherein the golden rule of interpretation was considered and after taking note of catena of judgments it has been observed -

“The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision.” Therefore, taking into consideration this aspect case is made out for admitting the Second Appeal, as substantial questions of law are arising in this case.

8. Per contra, the learned Advocate representing the respondent Nos. 1 and 2-original plaintiffs vehemently submitted that the point, which the appellants intend to raise, is no res integra. Though in *Parshuram Gaikar (supra)* and *Lotan Shimpi (supra)* this Court had taken a view that when law requires prior permission to be obtained under Section 43 of the B.T. and A.L. Act for sale of such restricted land, then the possession that was parted with earlier without there being any prior permission will have to be held as illegal. So also, for such illegal contract the discretionary relief of specific performance cannot be granted, as it would be against the public policy. However, later on in *Balu Zarole (supra)* by taking note of both these two cases and also the case in *Nathulal (supra)* and *Chandnee Widya Vati Madden v. C.L. Katial*, AIR 1964 SC 978 this Court held that -

“Section 43 of the B.T. and A.L. Act would be attracted at the stage of the execution of

the conveyance since upon the execution of the sale deed, the property is transferred by sale. An agreement to sell does not create any Interest in property. Reliance was placed on the decision by D.K. Deshmukh, J., delivered on 1 October, 1997, in Appeal from Order No.713 of 1997 and it was held that -

“Before the conveyance is executed in pursuance of a decree for specific performance the previous sanction of the Collector under Section 43 would have to be sought and the execution of the conveyance can only take place after and subject to the grant of sanction by the Collector.”

Similar view was then taken in *Kalandi Baburao Raut and others v. Dattu Damu Thakare*, 2008 (6) All MR 327 : 2009 (1) AIR Bom R 42. These two subsequent pronouncements definitely take note of the decision in *Parshuram Gaikar (supra)* and *Lotan Shimpi (supra)* and in view of the decision in *Nathulal (supra)* as well as in *Vishwa Nath Sharma v. Shyam Shanker Goela* and another (2007) 10 Supreme Court Cases 595 : (AIROnline 2007 SC 118), it is absolutely not necessary to bring prior permission at the time of grant of specific performance. When this Court had relied on the decisions by Supreme Court, which are binding in nature, the earlier decisions of this Court, which were contrary to the decision of the Supreme Court cannot be relied upon. No substantial question of law is arising in this case to admit the Second Appeal.

9. The facts of the case are very much clear and when the present appeal is under Section 100 of the Code of Civil Procedure, we may not go much into the facts, that is, whether the plaintiffs have proved execution of the agreement to sell or not. Both the Courts below have given concurrent findings in that respect. Further, the said agreement to sell was registered document and in order to prove the said document plaintiffs have led oral evidence, that is, plaintiff No.1 himself and produced the agreement to sell at Exh.123. One more aspect, that is, required to be noted is that when evidence was led by present appellants i.e. original defendant Nos.1 and 2 before Sub Divisional Officer, he had made a statement that earlier to the agreement to sell dated 27.08.2001 there was an agreement to sell

executed by Babu in favour of plaintiffs on 01.06.1999, but that was cancelled and then the agreement dated 27.08.2001 has been executed. Further, two notices were issued by the present appellants-original defendants to plaintiffs, in which they have admitted execution of such a document. Under such circumstance, without going much into further details, it can be seen that the execution of the said agreement to sell has been duly proved by the plaintiffs. In the said registered document itself there is a statement that earnest amount has been paid by the plaintiffs to Babu.

10. The role of the plaintiffs was then limited to the extent of giving remaining amount at the time of execution of the sale deed. However, prior to that Babu was supposed to bring the necessary permission. Definitely, it appears that there was an application moved before Sub Divisional Officer, but then it is stated that after death of Babu defendants changed their stand and gave statement that the agreement to sell has become barred by limitation, and therefore, permission should not be given. Now, the objection is raised that in view of bar for transfer of the tenanted land under Section 43 of the B.T. and A.L. Act, the agreement itself is void. It is tried to be contended that unless the prior permission is obtained, such transaction for transfer is not legally permissible. Though the learned Advocate appearing for the appellants has relied on the cases *Parshuram Gaikar (supra)* and *Lotan Shimpi (supra)* and also in respect of interpretation to be made of the words of a provision, the point is not *res integra*. The subsequent decisions in *Balu Zarole (supra)* and *Kalandi Raut (supra)* are clear enough in stating that the legal position explained by the Hon'ble Apex Court in *Nathulal (supra)* should be considered. It is to be noted that Section 70(4) of Madhya Bharat Land Revenue and Tenancy Act was almost on the same line, as it has been referred to in para No.5 of the said judgment. In that case Phoolchand was not an agriculturist and, therefore, the stand was taken that without the sanction of the State Government land cannot be sold to him. There was no such specific clause in that case that *Nathulal* will secure the sanction under Section 70(4) of the said Act after paying the appropriate fee, but then it was held

that, "Where by statute property is not transferable without the permission of the authority, an agreement to transfer the property must be deemed subject to the implied condition that the transferor will obtain the sanction of the authority concerned." In that case also, there was an agreement of sale and it was specifically observed that it does not amount to sale and, therefore, there is no hurdle when the person is willing to perform his part of the contract, to grant specific performance. But then it was stated that before such ultimate execution is made the necessary requirements under the Act should be fulfilled. Therefore, in view of Nathulal's case (supra) in Balu Zarole (supra) after taking note of decision by learned Single Judge of this Court D.K. Deshmukh, J. delivered on 01.10.1997 in Appeal from Order No.713 of 1977 it was observed that Section 43 of the Act would be attracted at the stage of execution of the conveyance, since upon the execution of the sale deed, the property is transferred by sale. *An agreement of sale does not create any interest in the property.* Further in Kalindi Raut (supra) this Court observed by taking all the earlier decisions of this Court that the judgment in the matter of Parshuram Gaikar (supra) is per incuriam and has no binding force in view of the decision in Balu Zarole (supra). In Kalindi Raut (supra) it was observed that, "What is prohibited in view of Section 43 of the Act is transfer by sale, gift, exchange, mortgage, lease or assignment, without previous sanction of the Collector". In that case also the parties had entered into an agreement to sell and, therefore, it was held that, there is no creation of any interest in favour of vendee and the proprietary title does not validly pass from the vendor to the vendee.

11. Further, note of the decision in Chandnee Widya Vati Madden v. C.L. Katial, AIR 1964 SC 978 was taken, wherein it has been laid down that,

"It has been laid down that it is permissible for the Court to get enforces the terms of contract and to join upon the vendor to make necessary application for the permission. In the event of permission being refused, the vendee shall be entitled to the damages." Therefore,

the law of precedent also makes it obligatory now on this Court to rely upon the decisions in Nathulal (supra), which has been then followed in Balu Zarole (supra) and Kalindi Raut (supra).

12. Further, the decision in Vishwa Nath Sharma (supra) is also very much clear on that point. The only difference was the previous permission to be obtained from the development authority as the plot was situated in Delhi. Prior permission was necessary in that case also, as there was impediment on the transfer of the plot, in absence of the prior permission. After taking note of Chandnee Madden (supra) and other decisions, Hon'ble Apex Court has reiterated that obtaining such permission prior to the execution of such sale deed can be incorporated in the decree as a condition precedent.

13. Therefore, in view of this legal position no illegality or error of any sort can be found in the judgment passed by both the Courts below. No case is made out to admit the Second Appeal, as it is not giving rise to any substantial question of law as contemplated under Section 100 of the Code of Civil Procedure. Hence, the Second Appeal stands dismissed as not admitted.

The Civil Application for stay also stands dismissed.

*Appeal dismissed.*

2021 (4) ABR 164

: AIR Online 2021 Bom 1178

(AURANGABAD BENCH)

R. G. AVACHAT, J.

Commercial Developers, Mumbai and others v. Asif Shafi Mansuri and others.

Civil Revision Application No. 78 Of 2019, D/- 17-3-2021.

(A) Specific Relief Act (47 of 1963), S. 34 — Suit for declaration — Plaintiff seeking declaration that property in suit is Wakf and gift deed executed by defendant—Mujawar in favour of his wife is void — Suit property was dedicated 100 years before 1909 for charitable and religious purpose — It is a case of lost grant — Who

UID : 340378

4

**2008(6) ALL MR 327**

IN THE HIGH COURT OF JUDICATURE AT  
BOMBAY  
(AURANGABAD BENCH)

**R. M. BORDE, J.**

Kalandi Baburao Raut (since deceased) & Anr.  
Vs.

Dattu Damu Thakare

Second Appeal No.179 of 2001  
**17th June, 2008.**

Mr. P. M. SHAH, Senior Counsel holding for Mr. N. V. GAWARE, advocate for Appellants.  
Mr. R. K. JADHAVAR, advocate for the Respondent.

**Bombay Tenancy and Agricultural Lands Act (1948), S.326 - Specific Relief Act (1963), S.20 - Suit for specific performance - Agreement of sale - Agreement entered into, without obtaining prior sanction of collector prohibited in view of S.43 of Bombay Tenancy and Agricultural Lands Act - Held, it will be always the responsibility of the vendor to remove the impediment and secure appropriate permission - Grant of specific performance can always be made subject to such condition of securing permission from the appropriate authority.**

What is prohibited in view of Section 43 of the said Act is transfer by sale, gift, exchange, mortgage, lease or assignment, without previous sanction of the Collector. In the instant matter, parties have entered into an agreement of sale. It cannot, therefore, be held that there is any creation of interest in favour of vendee and the proprietary title does not validly pass from the vendor to the vendee.

In the instant matter, in view of the fact that the property, which is sought to be purchased by the plaintiffs was purchased by vendor/defendant under Section 32-G of the said Act, there is restriction, as laid down under Section 43 of the Act, in respect of transfer of

such property. Transfer of such property or part thereof is permissible only with previous sanction of the Collector. The property in dispute is subjected to restriction as contained in Section 43 of the Act and in view of the terms of agreement arrived at between the parties, it will always be the responsibility of the vendor to remove the impediment and secure appropriate permission.

In this view of the matter, it would be the responsibility of the vendor to make an application to the Collector seeking permission for alienation and grant of specific performance can always be made subject to such condition of securing permission from the appropriate authority. 2001(4) ALL MR 116 - Rel. on. 1994(1) Bom.C.R. 715 - Judgment, per incurium. (Paras 12, 14, 15)

**CASES CITED :**

<b>PARA</b>	
Balu Baburao Zarole Vs. Shaikh Akbar Shaikh Bhikan, 2001(3) ALL MR 95 : AIR 2001 Bom. 364 .....	9, 11
Sitaram Ganu Mhaskar Vs. Keshav Ramchandra Shelor, 2001(4) ALL MR 116 ..	10, 11
Shri. Parshuram Kathod Giakar Vs. Pandu Mahadu Hard, 1994(1) Bom.C.R. 715 .....	10
Satyabrata Ghose Vs. Mugneeram Bangur & Co., AIR 1954 SC 44 .....	12
Radhakishan Laxminarayan Toshniwal Vs. Shridhar Ramchandra Alshi, AIR 1960 SC 1368 .....	12
Mrs. Chandnee Widya Vati Madden Vs. Dr. C. L. Katial, AIR 1964 SC 978 .....	13, 17
Nathulal Vs. Phoolchand, 1969(3) SCC 120 .	14

**JUDGMENT :-** Appellants herein are raising challenge to the judgment and decree dated 29.08.1996, passed by the Joint Civil Judge, Junior Division, Jamkhed in Regular Civil Suit No.187/1990, whereby suit presented by plaintiffs - appellants herein claiming relief of specific performance of contract on the basis of agreement of sale dated 06.11.1989 has been

dismissed. The judgment and decree passed by the trial Court has been confirmed in an appeal presented at the instance of plaintiffs - appellants being R.C.A. No.402/96, by the Extra Joint District Judge, Ahmednagar, vide judgment and order dated 15.09.2000.

While admitting the appeal on 31.08.2001, this Court has framed following substantial questions of law.

(i) Whether section 43 of the Bombay Tenancy and Agricultural Lands Act prohibits absolutely, even an agreement of sale, without delivery of possession, to the prospective purchaser?

(ii) Whether such an agreement of sale is rendered unlawful and illegal?

(iii) Whether the Courts below have failed to exercise the jurisdiction vested in them in passing decree of specific performance?

This Court is expected to decide the matter in terms of the questions framed above.

2. Plaintiffs have approached the Court with a contention that in view of the registered agreement dated 06.11.1989, the defendant has agreed to alienate an area to the extent of 42 ares (275 feet x 162 feet) out of agricultural land S.No.454/2 of village Jamkhed in favour of plaintiffs for consideration of Rs.20,000/-. Plaintiffs advanced an amount of Rs.10,000/- towards earnest amount and it was agreed between the parties that balance of amount shall be paid at the time of execution of the sale deed. A condition was incorporated in the agreement of sale that balance of amount shall be paid till 06.10.1990 or after grant of permission for conversion of user of land for non agricultural purpose. It was also settled between the parties that possession shall have to be handed over after execution of the sale deed. According to the plaintiffs, they were ready and willing to perform their part of contract and they asked the defendant to execute the sale deed. However, defendant did not comply with his part of agreement. As such, plaintiffs called upon the defendant to execute the sale deed after accepting balance

consideration of Rs.10,000/-, by issuing notice on 04.10.1990. Plaintiffs gained information that the defendant is trying to enter into an agreement of sale with some other person. As such, plaintiffs were constrained to file suit claiming specific performance of contract.

3. Defendant caused his appearance in response to the suit summons and resisted suit claim by filing written statement at Exhibit-18. According to the defendant, there is no portion of 42 ares land, out of S.No.454/2. According to the defendant, land has been allotted to his family in accordance with provisions of Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'the said Act'), and as such, for alienating the property, permission of appropriate authority is required. Defendant contends that agreement of sale is illegal and invalid in view of the provisions of Section 43 of the said Act. Defendant further contends that plaintiffs were indulging in money lending business and the transaction entered into between the parties is in the nature of loan transaction and the document i.e. agreement of sale was got executed by way of security for loan advancement. Defendant further contends that market price of the land is far more than the amount mentioned in the agreement of sale. Defendant, as such, prayed for dismissal of the suit.

4. The trial Court, on the basis of pleadings, framed issues and answered the same after appreciating evidence placed on record by the parties. The trial Court, as regards issue no.1 - "Whether the plaintiff prove that the defendant had executed agreement of sale in his favour?", answered it in affirmative. As regards issue no.2 - "Whether the plaintiff prove that he is ready and willing to perform his part of contract?", the trial Court answered in affirmative. However, the trial Court has held, while answering issue no.3 - "Whether the defendant prove that the agreement of sale was executed as a security for the loan?", answered in negative. So far as issue no.4 - "whether the defendant prove that the agreement of sale is

illegal?', trial Court answered it in the affirmative. The trial Court, as such, dismissed the claim in respect of specific performance of the contract. The trial Court, however, decreed the claim in respect of refund of consideration amount and directed the defendant to pay Rs.10,000/- along with interest at the rate of 6% p.a. from the date of agreement of sale i.e. 06.11.1989, on or before 31.10.1996.

5. The judgment and decree passed by the trial Court was subjected to challenge at the instance of original plaintiffs. Defendant did not prefer any appeal and as such he shall be deemed to have accepted adverse finding recorded by the trial Court.

6. The appeal preferred by the plaintiffs was restricted to refusal of claim in respect of specific performance of contract i.e. execution of sale deed in favour of plaintiffs. The first appellate Court also came to the conclusion that the alleged agreement of sale, which is the basis for claiming specific performance entered into between the parties, is illegal one, in view of non observance of the procedure prescribed under Section 43 of the said Act. The first appellate Court has held that the agreement of sale is null and void and as such plaintiffs are not entitled for grant of relief of specific performance of contract. It was held that trial Court has rightly rejected the prayer in that behalf. The other findings in respect of proof of execution of the document, namely agreement of sale as well as in respect of readiness and willingness to perform part of the contract by the plaintiffs are confirmed by the first appellate Court. The appeal presented by plaintiffs, thus, came to be dismissed.

7. Shri. Shah, learned Senior Counsel appearing for appellants, has invited my attention to the provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948, which reads as under:

"43. (1) No land purchased by a tenant under section 32, 32-F, 32-I, 32-O, (33-C or 43-ID) or sold to any person under section 32-P or 64 shall be transferred by sale, gift,

exchange, mortgage, lease or assignment without the previous sanction of the Collector. (Such sanction shall be given by the Collector in such circumstances, and subject to such conditions, as may be prescribed by the State Government:

Provided that, no such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, for raising a loan for effecting any improvement of such land.

2. Any transfer of land in contravention of sub-section (1) shall be invalid."

8. According to Shri. Shah, learned Senior Counsel appearing for appellants, what is prohibited by Section 43 is transfer by sale, gift, exchange, mortgage, lease or assignment, without previous sanction of the Collector. According to learned Senior Counsel, entering into an agreement for purchasing the property has not been prohibited in view of Section 43 and there is no impediment in granting specific performance subject to appropriate sanction by the Collector as contemplated under Section 43 of the said Act.

9. Shri. Shah, learned Senior Counsel for appellants, also placed reliance on the judgment in the case of **Balu Baburao Zarole and others Vs. Shaikh Akbar Shaikh Bhikan and others**, reported in [AIR 2001 Bombay 364 : 2001(3) ALL MR 95]. The Learned Single Judge of this Court, after considering relevant provisions, has laid down that a decree for specific performance can be granted subject to sanction by the Collector in such matters. It has been observed by the Learned Single Judge that provisions of Section 43 of the Act would be attracted at the stage of execution of the conveyance and the property can be said to have been transferred only upon execution of sale deed and entering into an agreement of sale does not create any interest in the property and as such the prohibition contained in Section 43 of the Act is not an

impediment in granting conditional decree. In paragraphs 3 and 4 of the said judgment, it has been observed thus :

"3. Section 43 of the Act provides, in so far as is material that no land purchased by a tenant *inter alia* under S.32 "shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector". The requirement of taking the previous sanction of the Collector would apply to a transfer by sale or by any of the other modes specified therein. In so far as the requirement of taking the sanction of the Collector under the provisions of S.43 of the Bombay Tenancy and Agricultural Lands Act, 1948 is concerned, the Trial Court and the Appellate Court correctly held that the decree for specific performance would be subject to the condition of the sanction being obtained to the sale from the Collector under S.43. In the event of the Collector not granting sanction, the Plaintiff would be entitled to a refund of the purchase price together with interest only as, in the absence of sanction under S.43 the sale cannot be concluded. In taking this view, no error has been committed by the Trial Court and by the appellate Court. In *Nathulal Vs. Phoolchand* reported in AIR 1970 SC 546, a Bench of the Supreme Court, consisting of Mr. Justice J. C. Shah (as the Learned Chief Justice then was) and Mr. Justice K. S. Hegde held that where by a statute property is not transferable without the permission of an authority, an agreement to transfer the property must be deemed to the subject to the implied condition that the transferor will obtain the sanction of the authority concerned. While laying down the aforesaid proposition in paragraph 5 of its Judgment, the Supreme Court referred to the judgment of the Privy Council in AIR 1930 PC 187 and the judgment of the Supreme Court in AIR 1964 SC 978.

4. Section 43 of the Act would be attracted at the stage of the execution of the

conveyance since upon the execution of the sale deed, the property is transferred by sale. An agreement to sell does not create any interest in property. In this regard, a reference may be made to a Judgment of learned Single Judge of this Court, D. K. Deshmukh, J., delivered on 1st October, 1997, in Appeal from Order No.713 of 1997. The earlier judgment delivered by M. F. Saldanha, J. reported in (1994)I Bom.C.R. 715 which was subsequently referred to in the Judgment of V. H. Bhairavia, J. reported in (1994)4 Bom.C.R. 575, will have to be construed with reference to the observations of the learned Judge in para 9 of the judgment where the Learned Judge clarified that the observations which were made in the order were for the limited purpose of the petition before the Court, which arose against an interim order. Since the Suit was pending before the Trial Court, the Learned Judge held that it would be open to the parties in the said case to urge all contentions before the Trial Court "without being prejudiced even in the least by any of the observations made" in that Judgment. In view of the subsequent Judgment of a learned Single Judge, D. K. Deshmukh, J., it would be clear that the provisions of S.43 of the Act would be attracted at the stage of the execution of the conveyance. Before the conveyance is executed in pursuance of a decree for specific performance, the previous sanction of the Collector under S.43 would have to be sought and the execution of the conveyance can only take place after and subject to the grant of sanction by the Collector. If the Collector grants sanction, the terms and conditions laid down therein have to be observed. If sanction is refused, no conveyance can be executed. Section 43 would unquestionably be attracted to the execution of the conveyance in respect of the land and it is, therefore, that both the Courts in the present case came to the conclusion that the decree will have to be subject to the condition that

permission of the Collector would have to be sought under the provisions of S.43. The judgments of both the Courts below do not suffer from any infirmity. There is, therefore, no merit in the Second Appeal."

10. A similar question arose in the matter of **Sitaram Ganu Mhaskar and another Vs. Keshav Ramchandra Shelor and another**, reported in 2001(4) ALL MR 116. In the reported judgment, relief was claimed on the strength of an agreement of sale entered into between the parties. An objection was raised in respect of raising claim on the strength of agreement of sale, which is subject to bar as provided under Section 43 of the said Act. It was canvassed that the agreement of sale entered into, without obtaining prior sanction of the Collector, shall not be relied upon and the suit filed for specific performance of agreement of sale is not at all maintainable on the strength of such agreement which itself is invalid. The Learned Single Judge, while dealing with the objection, has referred to the judgment in the matter of **Shri. Parshuram Kathod Giakar Vs. Pandu Mahadu Hard and another**, reported in 1994(1) Bom.C.R. 715, wherein a view has been taken that there is total prohibition or legal bar on alienation of the lands in question and if one were to read the wording of the section, more carefully, it would include any attempt of doing so or for that matter the execution of any document in pursuance thereof.

It is, in these circumstances, that the Court has held that it would not be possible to draw a distinction between the agreement to sell and the conclusion of the sale. While distinguishing the analogy adopted in the reported judgment (Parshuram Vs. Pandu), the learned Single Judge, in para 4, has observed thus :

"4. In my opinion, the observations of the learned Single Judge are contrary to the clear words used in section 43. What cannot be done without previous sanction of the Collector, is transfer of the land by sale, gift, exchange, mortgage, lease or assignment.

An agreement of sale is not a transfer. It is settled view that an agreement of sale does not transfer any interest in the land. Therefore, in my opinion, the observations of the learned Single Judge of this Court being contrary to the provisions of section 43 of the Act, are per incuriam and therefore, have no binding force."

11. As has been held by the Learned Single Judge, the judgment in the matter of Parshuram Kathod Giakar being per incuriam, has no binding force and as such the view adopted by the Learned Single Judge in the matter of **Balu Baburao Zarole (AIR 2001 Bombay 364 : 2001(3) ALL MR 95)** as well as in the matter of **Sitaram Ganu Mhaskar, (2001(4) ALL MR 116)**, needs to be taken as a correct pronouncement on the point in issue.

12. What is prohibited in view of Section 43 of the said Act is transfer by sale, gift, exchange, mortgage, lease or assignment, without previous sanction of the Collector. In the instant matter, parties have entered into an agreement of sale. It cannot, therefore, be held that there is any creation of interest in favour of vendee and the proprietary title does not validly pass from the vendor to the vendee. It would be appropriate to refer to Section 54 of the Transfer of Property Act, which defines "Sale":

"54. "Sale" defined - "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

**Contract of sale.**- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

Section 54 of the Transfer of Property Act specifically lays down that a contract of sale itself does not create any interest or charge on such property. It would be useful to refer to reported judgments in the case of (1) **Satyabrata Ghose Vs. Mugneeram Bangur & Co. and another**, reported in AIR 1954 SC 44; and (2) **Radhakishan Laxminarayan Toshniwal Vs. Shridhar Ramchandra Aishi and others**, reported in AIR 1960 SC 1368. It has been observed by the Apex Court that:

"Under Section 54 of the Transfer of Property Act, a contract for sale does not of itself create any interest in or charge on immovable property. Where, therefore, the parties enter into a mere agreement to sell, it creates no interest in favour of the vendee and the proprietary title does not validly pass from the vendors to the vendee and until that is completed, no right to enforce pre-emption arises".

13. It has been laid down by the Apex Court in the case of **Mrs. Chandnee Widya Vati Madden Vs. Dr. C. L. Katial and others**, reported in AIR 1964 SC 978, that it is permissible for the Court to get enforced the terms of contract and to enjoin upon the vendor to make necessary application for permission. In the event of permission being refused, the vendee shall be entitled to the damages.

14. In the instant matter, in view of the fact that the property, which is sought to be purchased by the plaintiffs was purchased by vendor/defendant under Section 32-G of the said Act, there is restriction, as laid down under Section 43 of the Act, in respect of transfer of such property. Transfer of such property or part thereof is permissible only with previous sanction of the Collector. The property in dispute is subjected to restriction as contained

in Section 43 of the Act and in view of the terms of agreement arrived at between the parties, it will always be the responsibility of the vendor to remove the impediment and secure appropriate permission. In this regard, reference may be necessary to the decision of the Apex Court in the case of **Nathulal Vs. Phoolchand**, reported in 1969(3) SCC 120, wherein it has been held that :

"That it is well settled that where by statute, property is not transferable without the permission of the authority, an agreement to transfer the property must be deemed subject to the implied condition that the transferor will obtain the sanction of the authority concerned. Hence, Nathulal as vendor has necessarily to get the prior sanction of the State Government made under Section 70(4) of the Madhya Bharat Land Revenue and Tenancy Act (Act No.66 of 1950). This he has to fulfil before he can claim payment from Phoolchand notwithstanding the absence of such a clause in the agreement."

15. In this view of the matter, it would be the responsibility of the vendor to make an application to the Collector seeking permission for alienation and grant of specific performance can always be made subject to such condition of securing permission from the appropriate authority.

16. Learned Counsel Shri. Jadhavar, appearing for the Respondent - original defendant, has strenuously contended that vendor cannot be put to terms and cannot be compelled to tender an application to the authority.

17. As, in the instant matter, agreement of sale executed between the parties has been held to have been proved, whereas readiness and willingness to perform part of the contract by the plaintiff has also been held to have been proved, the defendant cannot be permitted to turn around and contend that it would be his choice, whether to apply for appropriate permission or not. In the facts and

circumstances of the case, it would always be the responsibility of the vendor to make an application for permission and remove the legal impediment for specific performance of the agreement and while passing the decree, the Court has to enforce the terms of the contract and to enjoin upon the vendor to make necessary application for permission, or else, as has been held by the Apex Court in the reported judgment in the case of **Mrs. Chandnee Widya Vati Madden (AIR 1964 SC 978)**, the consequences shall follow.

18. Another argument that has been put forth by the Respondent is in relation to the condition incorporated in the agreement of sale relating to conversion of user for non agricultural purposes. However, failure to secure such permission can be no ground for refusal to perform part of the contract. In fact, it is for the defendant to co-operate and take initiative for securing appropriate permission.

19. Learned Counsel for appellants has invited my attention to Rule 25-A(1)(e) of the Bombay Tenancy and Agricultural Lands Rules, 1956 (for short, 'the said Rules'), which enables the Collector to accord sanction for transfer of the land in the circumstances such as when the land is being sold bona fide for any non-agricultural purpose. It would be the responsibility of the vendor to secure such permission by making an application under Rule 25-A of the said Rules. It is made clear at this stage that in the event of failure by the defendant to tender an application, as mandated, necessary legal consequences shall follow and plaintiffs - appellants would be entitled to take steps permissible in accordance with law.

20. For the reasons stated above, the Appeal, therefore, succeeds and is allowed with costs. The suit filed by plaintiffs in respect of specific performance of agreement executed on 06.11.1989 is decreed subject to securing permission as contemplated under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948. Defendant/Respondent is directed to execute necessary instrument of sale within

a period of six months on accepting balance consideration of Rs.10,000/- and hand over possession of the suit property to the plaintiffs, after securing necessary permission as contemplated under Section 43 of the Bombay Tenancy & Agricultural Lands Act. In the event of refusal to accord permission by the Collector, plaintiffs-appellants would be entitled for refund of consideration amount, as has been directed in terms of clause (b) of the order, passed by the learned Joint Civil Judge, Junior Division, Jamkhed on 29.08.1996.

Pending Civil Applications stand disposed of.

Appeal allowed.

**2008(6) ALL MR 333**

IN THE HIGH COURT OF JUDICATURE AT  
BOMBAY  
(AURANGABAD BENCH)

**R. M. BORDE, J.**

Baban Kondiba More (Deceased through L.Rs.)  
& Ors.  
Vs.

Kashinath s/o Maruti Kothule & Anr.

Second Appeal No.84 of 2001  
12th June, 2008.

Shri. DHANANJAY DESHPANDE, Advocate for the Appellants.

Shri. V. S. BEDRE, Advocate for Respondent Nos.1 and 2.

**Transfer of Property Act (1882), S.58(e) - Limitation Act (1963), Art.137 - Civil P.C. (1908), O.34, R.7(2) - Mortgage by conditional sale - Deposit of amount after period stipulated in preliminary decree has expired - Held, in any eventuality, the Court could not have extended time for depositing the amount beyond the period of limitation prescribed under the Statute.**

In the present case, considering the

जेवासा सेप्लिगं. प्र. दि.दि.दि. मज्ज साहेब. यु.दि.

से.मु.न.

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सा.प.का.दि.दि.

वादी

दामाज्य जालपम कुंछर

पु.वादी

भाऊसाहेब खिताबमं दिने



मा काही-वादी तर्फे कोर्टी इतरे दि.सदरु दालपची

तादीक आपरोपी नि.न.यु चा युकावादी खाली नमडुडी

बाई.सदर-वादी ह नि.न.यु चा युकावादी खाली काही

मदरवादी कागड-पत्रे दालवळ करीत आहेत.

तादि सदरची कागड-पत्रे दालवळ करीत वेळाप

कोर्टी बाई. तादि इतरे मज्जर घेवा दि कोर्टी.

जेवासा  
29/9/24

वादी मज्जुर.

Order

Production of documents is allowed.

Digitally signed by SANDHYA YUVRAJ SUL Date: 2026.01.21 18:02:36 +0530

2nd Jt.CJJD Newasa

जेवासा मधील म. सिव्हील जज साहेब ज्यु.डि.

Order

सु.न

साय को.लिन

पाटी

Seen & filed

SANDHYA YUVRAJ SUE Digitally signed by SANDHYA YUVRAJ SUE Date: 2026.01.21 18:02:28 +0530

3/2/2024

देवालय नासपन कु.दा.२

पु.पाटी

2nd Jt.CJJD Newasa

भा.स.देव जिता.दा.मि.१

या पाठी वारी मध्ये दालम काढणे वगळी वगळी पाटी  
वगळी पुसाणे.

१) पाटी वगळी वगळी - गोरखनाथ पिरापा जजल साय को.लिन

२) पाटी वगळी वगळी - निमेश सुभाष सिरसाठ साय को.लिन

साय पुसाणे - दालम - पाटी दालम असे :-

जेवासा  
२१/१/२०२४

पाटी वगळी

## नेवासा येथील मे. सिव्हील जज (ज्यु.डी) साहेब

यांचे कोर्टात

रे.मु.नं.

३६२/२०२५

वादी

दत्तात्रय लक्ष्मण कुन्हाट

प्रतिवादी

भाऊसाहेब सिताराम झिने वगैरे

याकामी वादी तर्फे निशाणी नं. ५ च्या चौकशीकामी शपथपत्र

खालीलप्रमाणे :-

याकामी मी गोरखनाथ पिराजी नजन, वय ४५, धंदा शेती, रा. माळीचिंचोरा, ता. नेवासा, जि. अहमदनगर कारणे सत्यप्रतिज्ञेवर अॅफिडेव्हिट करतो की,

- सदर दाव्यातील वादी आणि प्रतिवादी यांना मी ओळखतो. तसेच दावा मिळकत गट नं. १८२/१ई हि माझ्या माहितीची व पाहण्यातील आहे. कारण माझी शेतजमीन गट नं. १८५/१ हि दावा मिळकती पासून १००० फुटावर अंतरावर आहे.
- सदर दावा मिळकत ही सन २००४ साला पासून वादीचे वडिल यांना प्रतिवादी यांनी वहिवाटीस दिलेली होती व आहे. तेव्हापासून सदरची जमीन ही वादीचे वडिल व त्यांच्या मृत्युनंतर वादी यांच्या कब्जात होती व आहे. त्यानंतर सदर प्रतिवादी यांनी सदरची दावा मिळकत ही त्यांना वहिवाटीस गैरसोयीची असल्यामुळे व पाहिजे तेवढे उत्पन्न मिळत



नसल्यामुळे कायमस्वरुपी विक्रीस काढली आणि वादी नं. १ चे मयत वडिल यांना विनंती केली की, सदरची जमीन तुम्हीच खरेदी घेवुन टाका, त्यामुळे ता. ०६/१०/२००८ रोजी प्रतिवादी यांनी वादी नं. १ यांना नोटलाईज खरेदी करारनामा करुन दिलेला होता व आहे. आणि सदरची दावा मिळकत ही पुनर्वसन नविन शर्त असल्यामुळे त्याला खरेदीखताची परवानगी आणण्याची गरज होती आणि परवानगी आणुन खरेदीखत करण्याचे ठरलेले होते. ता. ०६/१०/२००८ च्या खरेदी करारनाम्या अन्वये २,००,०००/- रुपये अशी दावा मिळकतीची खरेदीखताची रक्कम ठरलेली होती व ती संपुर्ण रक्कम ती खरेदी करारनाम्यावर वादींनी प्रतिवादी यांना दिलेली आहे.

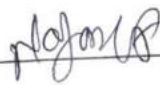
३. त्यानंतर खरेदीखताची परवानगी आल्यानंतर वादी यांनी प्रतिवादी यांना प्रत्यक्ष भेटुन खरेदीखत करुन देण्यास विनंती केली. त्यावेळेस त्यांनी देवु दिल्यावु करुन खरेदीखत करुन देण्यास प्रत्यक्षपणे टाळाटाळ केलेली आहे. तसेच सदर प्रतिवादी हे ति-हार्डत इसमा बरोबर सदर जमीनीचे खरेदी करण्याबाबतचे सौदे करीत आहे अशी माहिती गावा मध्ये मला मिळाली.

४. सदर जमीनीवर २००४ साला पासुन आजतागायत वादी यांच्याच कब्जात होती व आहे. सदर वादी यांनी दावा मिळकती मध्ये गहु, बाजरी अशी पिके घेतलेली होती व आहे.

येणेप्रमाणे अॅफिडेव्हिट असे.

नेवासा

दिनांक २८/१०/२०२५



अॅफिडेव्हिट करणार

14/10/21  
 ओळख [K.H. Patil]

याकामी मी गोरखनाथ पिराजी नजन, वय ४५, धंदा शेती, रा. माळीचिंचोरा, ता. नेवासा, जि. अहमदनगर कारणे सत्यप्रतिज्ञेवर अॅफिडेव्हिट करतो की, वर नमुद मजकुर माझ्या माहिती व समजुतीप्रमाणे खरा व बरोबर असुन त्याचे सत्यतेसाठी मी आज रोजी या लेखाखाली माझी सही केली असे.

नेवासा

दिनांक २८/१०/२०२५

*[Signature]*

अॅफिडेव्हिट करणार

Q 1377

I solemnly affirmed before me  
 by Gorakhnath Pisari Nayan  
 who is known to me  
 by A. K. H. Patil  
 whom I personally know

*[Signature]*  
 Asst. Superintendent

Age 45 odd  
 P/o Malchinchery  
 Nevasa

22/10/21  
 Superintendent  
 Court Nevasa

## नेवासा येथील मे. सिव्हील जज (ज्यु.डी) साहेब

यांचे कोर्टात

रे.मु.नं.

३६२/२०२५

वादी

दत्तात्रय लक्ष्मण कुन्हाट

प्रतिवादी

भाऊसाहेब सिताराम झिने वगैरे

याकामी वादी तर्फे निशाणी नं. ५ च्या चौकशीकामी शपथपत्र  
खालीलप्रमाणे :-

याकामी मी निलेश सुभाष शिरसाठ, वय ३५, धंदा शेती, रा. वडाळा  
बहिरोबा, ता. नेवासा, जि. अहमदनगर कारणे सत्यप्रतिज्ञेवर अॅफिडेव्हिट  
करतो की,

- सदर दाव्यातील वादी आणि प्रतिवादी यांना मी ओळखतो. तसेच दावा  
मिळकत गट नं. १८२/१ई हि माझ्या माहितीची व पाहण्यातील आहे.  
कारण माझी शेतजमीन गट नं. १७९ व १८० हि खरवंडी भेंडा रोडवर  
असुन दावा मिळकत व माझे जमीनी मध्ये पाचशे ते सातशे फुटावर  
अंतरावर आहे व मी जमीनीत वस्ती करुन राहतो.
- सदर दावा मिळकत ही सन २००४ साला पासुन वादीचे वडिल यांना  
प्रतिवादी यांनी वहिवाटीस दिलेली होती व आहे. तेव्हापासुन सदरची  
जमीन ही वादीचे वडिल व त्यांच्या मृत्युनंतर वादी यांच्या कब्जात होती  
व आहे. त्यानंतर सदर प्रतिवादी यांनी सदरची दावा मिळकत ही त्यांना



Assistant Superintendent  
Criminal Court Newasa

वहवाटीस गैरसोयीची असल्यामुळे व पाहिजे तेवढे उत्पन्न मिळत नसल्यामुळे कायमस्वरुपी विक्रीस काढली आणि वादी नं. १ चे मयत वडिल यांना विनंती केली की, सदरची जमीन तुम्हीच खरेदी घेवुन टाका, त्यामुळे ता. ०६/१०/२००८ रोजी प्रतिवादी यांनी वादी नं. १ यांना नोटलाईज खरेदी करारनामा करुन दिलेला होता व आहे. आणि सदरची दावा मिळकत ही पुनर्वसन नविन शर्त असल्यामुळे त्याला खरेदीखताची परवानगी आणण्याची गरज होती आणि परवानगी आणुन खरेदीखत करण्याचे ठरलेले होते. ता. ०६/१०/२००८ च्या खरेदी करारनाम्या अन्वये २,००,०००/- रुपये अशी दावा मिळकतीची खरेदीखताची रक्कम ठरलेली होती व ती संपुर्ण रक्कम ती खरेदी करारनाम्यावर वादींनी प्रतिवादी यांना दिलेली आहे.

३. त्यानंतर खरेदीखताची परवानगी आल्यानंतर वादी यांनी प्रतिवादी यांना प्रत्यक्ष भेटुन खरेदीखत करुन देण्यास विनंती केली. त्यावेळेस त्यांनी देवु दिलावु करुन खरेदीखत करुन देण्यास प्रत्यक्षपणे टाळाटाळ केलेली आहे. तसेच सदर प्रतिवादी हे ति-हार्डत इसमा बरोबर सदर जमीनीचे खरेदी करण्याबाबतचे सौदे करीत आहे अशी माहिती गावा मध्ये मला मिळाली.

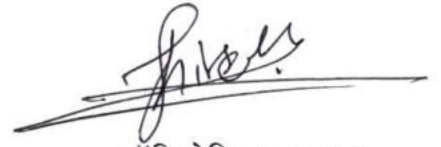
४. सदर जमीनीवर २००४ साला पासुन आजतागायत वादी यांच्याच कब्जात होती व आहे. सदर वादी यांनी दावा मिळकती मध्ये गहु, बाजरी अशी पिके घेतलेली होती व आहे.

येणेप्रमाणे ऑफिडेव्हिट असे.

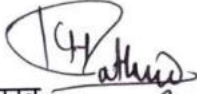
ADDITIONAL  
COMMISSIONER

नेवासा

दिनांक २८/१०/२०२५



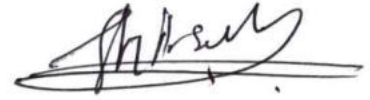
अॅफिडेव्हिट करणार

ओळख   
[T. H. Pathan]

याकामी मी निलेश सुभाष शिरसाठ, वय ३५, धंदा शेती, रा. वडाळा बहिरोबा, ता. नेवासा, जि. अहमदनगर कारणे सत्यप्रतिज्ञेवर अॅफिडेव्हिट करतो की, वर नमुद मजकुर माझ्या माहिती व समजुतीप्रमाणे खरा व बरोबर असुन त्याचे सत्यतेसाठी मी आज रोजी या लेखाखाली माझी सही केली असे.

नेवासा

दिनांक २८/१०/२०२५



अॅफिडेव्हिट करणार

mobile no 9305

I solemnly affirmed before me

by Millesh Subhash Shirasat Age 35 year

who is identified before me

by Ach. K. H. Pathan

whom I personally know

R/o Vadala Bah

Ass't. Superintenden



Newer

528110h  
Permanently  
Newas