


CNR No.MHNG130031292023 	Filed on	:	22/12/2021
	Registered on	:	22/12/2021
	Decided on	:	17/03/2026
	Duration	:	Yrs, Mon, Days

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, RAMTEK.  
(Presided over by Shri. S.M. Sarode)

**Special Civil Suit No. 237/2023**  
(Old Spl.C.S.No.12/2022)

**Exhibit No.45**

Sau. Sunita w/o Madan Hatwar,  
Age : 36 years, Occ.- Cultivator,  
R/o. Tarsa, Tahsil-Mouda,  
District-Nagpur

.. Plaintiff

... Versus ...

1. Pralhad s/o Daulat Hatwar,  
Aged 59 yrs., Occ.-Cultivator,
2. Madan s/o Daulat Hatwar,  
Aged 49 yrs., Occ.-Cultivator,
3. Gendlal s/o Daulat Hatwar,  
Aged 46 yrs., Occ.-Cultivator,
4. Nandlal s/o Daulat Hatwar,  
Aged 43 yrs., Occ.- Cultivator,  
All R/o Tarsa, Tahsil-Mouda,  
District-Nagpur.
5. Sau. Surekha w/o Tukaram Rahate,  
Aged 51 yrs., Occ.-Cultivator,  
R/o Subhash Ward, Ramtek,  
District-Nagpur.

.. Defendants

THE SUIT IS FOR SPECIFIC PERFORMANCE OF CONTRACT.

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Learned Advocate Shri. Sarang Deole for the plaintiff.  
Learned Advocate Shri. M.V.Yerpude for the defendant no.1.  
Learned Advocate Shri.L.M.Supare for the defendant nos.2 to 5.

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## **J U D G M E N T**

(Delivered on this 17<sup>th</sup> day of March, 2026)

The case of the plaintiff can be summarized as follows-

The plaintiff has instituted the present suit seeking specific performance of an agreement of sale in respect of agricultural land bearing Survey No. 328 admeasuring 0.56 HR, situated at Mouza Tarsa, Tahsil Mouda, District Nagpur. Hereinafter, it is referred to as a suit property. The defendants are the real brothers and sister and are recorded owners of the suit property. The plaintiff is the wife of defendant no.2.

02. According to the plaintiff, the defendants agreed to sell the suit property to her for a total consideration of Rs.20,00,000/-. An agreement of sale dated 10/05/2021 was executed between the parties and the same was duly notarized at Mouda. At the time of execution of the agreement, the plaintiff paid Rs.9,00,000/- towards part consideration, out of which Rs.8,00,000/- was paid through cheques to different defendants and Rs.1,00,000/- was paid in cash. The remaining consideration amount of Rs.11,00,000/- was agreed to be paid at the time of execution of the registered sale deed. The plaintiff was also put in possession of the suit property on the date of agreement.

03. It was further agreed between the parties that the registered sale deed would be executed on or before 30/06/2021, and that the defendants would measure the land, obtain the necessary measurement map (K-Prat) and procure all required documents so as to make the property free from encumbrances prior to execution of the sale deed. The plaintiff has contended that she was always ready and willing to perform her part of the contract by paying the balance consideration within the stipulated time.

04. The plaintiff repeatedly requested the defendants to execute the sale deed in her favour. However, except defendant No.2 to 5, the defendant no.1 failed to cooperate and avoided execution of the sale deed. Consequently, the plaintiff issued a legal notice dated 04/09/2021, calling upon the defendants to remain present before the Sub-Registrar, Mouda on 20/09/2021 for execution of the sale deed. The plaintiff claims that she remained present before the Sub-Registrar on the said date along with the balance consideration amount of Rs.11,00,000/- and two witnesses, but the defendants failed to appear and execute the sale deed. The plaintiff thereafter swore an affidavit before the Executive Magistrate, Mouda to record her presence. Hence, the plaintiff has filed the present suit seeking specific performance of the agreement of sale.

05. The defendant no.1 has filed his written statement at Exh.13. The defendant no.1 has contended that defendant Nos. 1 to 4 are real brothers and defendant No. 5 is their sister, being the legal heirs of deceased Daulat Hatwar. It is his case that the suit field bearing Survey No. 328 admeasuring 0.56 H.R. situated at Mouza Tarsa, Tahsil Mauda, District Nagpur, along with the residential house property bearing no. 448 admeasuring about 2700 sq.ft. situated at the same village, are the ancestral properties of their family. It is further asserted that the father Daulat Hatwar died on 08.04.2007 and his wife Saraswatibai had predeceased him on 17.05.2005, leaving behind four sons and one daughter as their legal heirs.

06. According to the defendants, during the lifetime of Daulat Hatwar and Saraswatibai, no partition of the aforesaid properties had ever taken place. Even after their death, there has been no partition by metes and bounds amongst defendant Nos. 1 to 5 in respect of either the agricultural

field or the house property. It is specifically contended that there exists no document evidencing any partition or arrangement among the legal heirs and therefore the properties continue to remain joint ancestral properties in the hands of all the defendants.

07. The defendant no.1 has further denied the alleged agreement to sell dated 10.05.2021 relied upon by the plaintiff. It is their contention that the said document is an unregistered instrument and is fabricated and bogus in nature. According to them, the plaintiff, in collusion with defendant No.2, has created the said document with a view to illegally claim rights over the joint family properties. The defendant no.1 further assert that possession of the suit property was never delivered to the plaintiff and therefore the said document is void, illegal and not binding upon them. It is also contended that after receiving the plaintiff's notice, the answering defendant issued a reply dated 30.05.2022 and even returned the alleged amount of Rs.2,00,000/- by cheque, thereby denying the alleged transaction in its entirety.

08. It is pertinent to note here that, the defendant no.1 has filed a counter-claim seeking partition and separate possession of his respective shares in the suit field as well as the house property. However, the counter claim is rejected as it was not in proper format as per the order passed below Exh.1.

09. On the other hand, defendant nos. 2 to 5 have filed their written statement at Exh.11 and stating that defendant Nos.1 to 5 are real brothers and sisters and the suit property stands recorded in their joint names. It is not in dispute that the plaintiff, who is the wife of defendant No.2, entered into an agreement of sale dated 10/05/2021 with respect to

the suit property. The defendants have admitted that all of them had executed the said agreement and that the terms and conditions thereof are not disputed. It is further admitted that the defendants received earnest money of Rs.9,00,000/- from the plaintiff through cheque and cash as mentioned in the agreement. Defendant Nos.2 to 5 have specifically contended that they were always ready and willing to execute the sale deed in favour of the plaintiff in accordance with the terms of the agreement; however, defendant No.1 was not prepared to perform his part of the contract.

10. It is further contended that, upon receiving the legal notice issued through the advocate of the plaintiff, defendant Nos.2 to 5 expressed their readiness to execute the sale deed. However, defendant No.1 declined to remain present before the office of the Sub-Registrar at Mauda on the date fixed for execution and registration of the sale deed and also informed the other defendants about his unwillingness to participate in the execution. Consequently, the sale deed could not be executed due to the adamant conduct of defendant No.1. Defendant Nos.2 to 5 have reiterated that they continue to remain ready and willing to execute the sale deed and transfer the title in favour of the plaintiff and have accordingly admitted the claim of the plaintiff, stating that they have no objection if the decree is passed in favour of the plaintiff

11. Heard learned counsel appearing for the plaintiff. Whereas, defendants and their learned counsel have been absent for last three dates. Following issues have been framed at Exh.22 for determination of the suit on the merit, I have recorded my findings along with reasons in respect of each issues as follows :

Sr. No.	Issues	Findings
1	Whether the plaintiff proves that defendants had executed agreement to sale dated 10/05/2021 in her favour in respect of suit property for the total consideration of Rs.20,00,000/- ?	In the affirmative
2	Whether the plaintiff proves that she paid an earnest amount of Rs.9,00,000/- to the defendants?	In the affirmative
3	Whether the plaintiff proves that the defendants had delivered possession of the suit property?	In the affirmative
4	Whether the plaintiff proves that she was willing and ready to perform her part of contract ?	In the affirmative
5	Whether the plaintiff is entitled for part performance of the contract as prayed by her ?	In the affirmative
5A	Whether the plaintiff is entitled for refund of earnest amount of Rs. 9,00,000/- with interest as prayed by her ?	Does not arise.
6	What order and decree?	Suit is decreed with costs.

### **REASONS**

12. To substantiate her case, the plaintiff examined herself as PW-1 at Exhibit 23 and also examined one witness namely Chandrashekhar Giri as PW-2 at Exhibit 42.

13. The plaintiff has placed on record documentary evidence in support of her claim. She has produced the original agreement to sell at Exhibit 39, 7/12 extract of suit property at Exh. 28, extract 8A at Exh.29, village map at Exh.30, office copy of notice at Exh.31, postal receipt at Exh.32, acknowledgments at Exh.33 to 37 respectively, original copy of

affidavit executed before executive magistrate at Exh.38, notice reply at Exh.40 and original cheque at Exh.41. The plaintiff thereafter closed her evidence by filing pursis at Exhibit 44.

14. On the other hand, the defendants have failed to adduce any evidence in support of their defence.

**AS TO ISSUE NOS. 1 AND 2-**

15. Since both these issues are interrelated and interconnected, they are taken up together for the purpose of common discussion.

16. It is a well-settled principle of law that the plaintiff must succeed on the strength of his own case and the evidence adduced by him, and he cannot derive any advantage from the perceived weakness, if any, in the defence of the defendant.

17. The case of the plaintiff is that the defendants executed an agreement to sell dated 10/05/2021 in her favour after accepting earnest money of Rs. 9,00,000/-.

18. In the aforesaid backdrop, the evidence adduced by the plaintiff requires careful scrutiny and evaluation.

19. The plaintiff (PW-1), in her examination-in-chief, has deposed in consonance with the averments made in the plaint.

20. Apart from the oral testimony, the plaintiff has also produced on record the original agreement to sell at Exh.39. On perusal of the said document, it reveals that the defendants executed the agreement to sell in respect of the suit property in favour of the plaintiff after accepting earnest money of Rs.9,00,000/-.

21. It is significant to note that the oral as well as documentary evidence adduced by the plaintiff has not been challenged by the defendants, as the defendants have failed to cross-examine the plaintiff.

22. Furthermore, the plaintiff has examined Chandrashekhar (PW-2), who is the attesting witness to the agreement to sell dated 10/05/2021 (Exh.39). The said witness has deposed that the defendants executed the agreement to sell in respect of the suit property in favour of the plaintiff after accepting earnest money of Rs.9,00,000/-. The testimony of the said witness has also remained unchallenged, as the defendants failed to cross-examine him.

23. Additionally, it is to be noted that the claim of the plaintiff has been admitted by defendant nos.2 to 5 in their written statement. Such admission on the part of defendant nos.2 to 5 itself establishes the case of the plaintiff and, therefore, the plaintiff is not required to prove anything further.

24. Upon careful consideration of the oral as well as documentary evidence placed on record, it stands proved that the defendants executed the agreement to sell in favour of the plaintiff after accepting earnest money of Rs.9,00,000/- in respect of the suit property.

25. In view of the foregoing discussion, I am inclined to answer Issues Nos.1 and 2 in the affirmative.

### **AS TO ISSUE NO. 3-**

26. The plaintiff has deposed in her testimony that possession of the suit property was delivered to her at the time of execution of the agreement. The contents of the agreement to sell (Exh.39) also reflect that possession of

the suit property had been delivered to the plaintiff at the time of execution of the agreement to sell. The evidentiary value of the agreement to sell (Exh.39) has not been challenged by any of the defendants.

27. In the light of the oral and documentary evidence on record, it stands established that possession of the suit property was delivered to the plaintiff upon execution of the agreement to sell. Hence, this issue is answered in the affirmative.

**AS TO ISSUE NO. 4 -**

28. Section 16(c) of the Specific Relief Act, 1963 mandates that the plaintiff must both plead and prove his readiness and willingness to perform his part of the contract. The expression “*readiness*” denotes the financial capacity of the plaintiff to pay the consideration amount, whereas the expression “*willingness*” denotes the intention of the plaintiff to perform his part of the contract, which can be inferred from the conduct of the party and the surrounding circumstances.

29. In order to establish her readiness and willingness, the plaintiff has examined herself and has deposed in support of her case. The plaintiff has specifically stated that the sale deed was to be executed on or before 30/06/2021, but defendant no.1 deliberately failed to perform her part of the contract, despite the fact that the other defendants were ready to perform their part of the contract.

30. The oral evidence of the plaintiff (PW-1) has remained unchallenged. The testimony of the plaintiff has been further strengthened and corroborated by the admission of defendant nos.2 to 5 in their written statement at Exh.11.

31. It is further evident that the plaintiff issued a notice dated 04/09/2021 (Exh.31) to the defendants calling upon them to execute the sale deed. The fact of sending the notice is duly supported by the original postal receipts and acknowledgments produced on record at Exh.32 and Exh.33 to 37, respectively. The conduct of the plaintiff, namely immediately issuing the notice to the defendants, clearly demonstrates her willingness to perform her part of the contract. The conduct of the plaintiff appears to be proactive and bona fide.

32. Thereafter, the plaintiff instituted the present suit on 22/12/2021, immediately upon the failure of defendant no.1 to perform his part of the contract. The conduct of the plaintiff throughout the subsistence of the contract clearly indicates that she was always ready and willing to perform her part of the contract.

33. It is also pertinent to note that the plaintiff had already paid nearly 50% of the sale consideration to the defendants at the time of execution of the agreement to sell, and this fact clearly establishes that the plaintiff possessed the financial capacity to pay the remaining consideration amount.

34. It is also pertinent to note that defendant no.1 has not led any evidence in support of his contention. Therefore, an adverse inference is required to be drawn against defendant no.1.

35. In light of the aforesaid discussion, I hold that the plaintiff has successfully established that she was always ready and willing to perform her part of the contract, whereas defendant no.1 failed to perform his obligations under the contract. Hence, Issue No.4 is answered in the affirmative.

**AS TO ISSUE NO. 5-**

36. It is a settled principle that under Section 20 of the Specific Relief Act, the relief of specific performance is discretionary in nature. The Court is not bound to grant such relief merely because it is lawful to do so. The discretion must be exercised judiciously and guided by equitable considerations so as to ensure that the relief granted is just, fair and equitable.

37. In view of the findings recorded on Issues Nos.1 to 4, the plaintiff is entitled to the relief of specific performance of the agreement to sell dated 10/05/2021. Accordingly, Issue No.5 is answered in the affirmative.

**AS TO ISSUE NO. 5A-**

38. In view of the findings recorded on Issues Nos.1 to 5, this issue does not survive for consideration.

**AS TO ISSUE NO. 6-**

39. In view of the findings recorded on Issues Nos.1 to 5, the suit for specific performance deserves to be decreed with costs. Hence, the following order is passed.

**ORDER**

1. The suit for specific performance of contract is hereby decreed with costs.
2. The defendants are hereby directed to execute a registered sale deed in favour of the plaintiff in respect of the suit property described in the plaint, or in accordance with the agreement to

- sell (Exh.39), upon receiving the balance sale consideration of Rs.11,00,000/- from the plaintiff.
3. The defendants shall execute the said sale deed within a period of two months from the date of this judgment.
  4. The plaintiff shall deposit/pay the balance sale consideration within one month from the date of this judgment.
  5. In the event the defendants fail to execute the sale deed within the stipulated period, the plaintiff shall be entitled to have the sale deed executed through the Court in accordance with law.
  6. Draw decree accordingly.

Date: 17/03/2026

Place: Ramtek

(S.M. Sarode)  
Civil Judge Senior Division,  
Ramtek

Endorsement

Evidence closed on	:	16.03.2026
Case argued on	:	16.03.2026
Judgment dictated on	:	17.03.2026
Transcription ready on	:	17.03.2026
Judgment checked and signed on	:	17.03.2026

CERTIFICATE

I affirm that, the contents of this P.D.F. file of judgment are word to word, as per original judgment.

R. J. Khobragede -Stenographer(Grade II)

