

 CNR No.MHSN080007032016	Presented on :- 02/05/2016
	Registered on :- 03/05/2016
	Argued on:-05/08/2026
	Decided on :- 06/08/2026
	Duration 10 Y 3 M 3 D

**In the Court of Jt Civil Judge Junior Division, Jath Tq.Jath Dist.Sangli.
(Presided over by Sanjay P.Bunde)**

RCS 96/2016

Exh.86

(CNR No.MHSN080007032016)

Vitthal Ishwara Narade,]
Age:- 36 years, Occupation:- Agriculture and Service,] Plaintiff
R/o Sanmadi,Tq.Jath Dist.Sangli]

Vs

1 Pandurang Sopan Narade,]
Age:-60 years, Occupation:- Agriculture,]

2 Aatmaram Sopan Narade,]
Age:-56 years, Occupation:- Agriculture,]

3 Namdev Sopan Narade,]
Age:- 49 years, Occupation:- Agriculture,]
Nos. 1 to 3 all R/o Sanmadi Tq.Jath Dist.Sangli.] Defendants

4 Dhondubai @ Dhandabai Krushna Hipparkar,]
Age:- 58 years, Occupation:- Agriculture and household,]
R/o Singanhalli,Tq.Jath Dist.Sangli]

5 Janabai Kerappa Nulake,]
Age:- 54 years, Occupation:- Household,]
R/o Tonewadi, Post.Konikunur Tq.Jath Dist.Sangli.]

6 Sayabai Rama Bajbadkar,]
Age:- 44 years, Occupation:- Household,]

R/o Karajgi Tq.Atpadi.Dist.Sangli.	]	
7 Harubai Sopan Narade,	]	
Age:-79 years, Occupation:- Household,	]	Defendants
8 Ramkrushna Mahadev Narade,	]	
Age:- 70 years, Occupation:- Agriculture,	]	
Both 7 and 8 R/o R/o Sanmandi, Tq.Jath Dist.Sangli]		
9 Kalpana Dhondiram Kute,	]	
Age:- 33 years, Occupation:- Household and Agriculture]		
R/o Kashiling Wadi, Tq.Jath Dist.Sangli.	]	
10 Dipali Vitthal Narade,	]	
Age:- 30 years, Occupation:-Agriculture	]	
R/o Sanmandi, Tq.Jath Dist.Sangli.	]	
11 Gramsevak, Gram panchayat, Sanmadi,	]	
Tq.Jath Dist.Sangli.	]	
12 The Chief Executive Officer,	]	
Jilla Parishad, Sangli.	]	

**Suit for a decree of specific performant, alternatively for refund of
earnest amount, and a decree perpetual injunction**

Appearance:-

Ld.Adv.Shri S.A.Wandare, for the plaintiff.

Ld.Adv.Shri M.N.Kore, for defendants 1,2,4 to 7.

Ld.Adv.Shri A.M.Pujari,for defendant 8.

Defendant 6 has admitted the claim by filing application along with an affidavit (without oath/affirmation) dt.03/11/2018.

The suit is proceeded ex-partee against defendants 10 to 12.

**Judgment
(Dt.06/08/2026)**

The suit is for a decree of specific performance, alternatively for refund of the earnest amount, and a decree perpetual injunction.

2 Brief facts of the plaintiff's case (**as per the plaint**):- The duly registered Agreement of Sale (**the AoS**) bearing No.1770/2006 dt.03/07/2006 in respect of the following agricultural land situated at Mouje Gholeshwar, Tq.Jath Dist.Sangli is the subject matter of the suit in respect of the property herein after referred to as the '**suit property 1(d)**'.

Description of the property:-

A land bearing Gat No.119, total admeasuring area 6 H 32 R, assessed @ Rs.2.96 Ps situated at Mouje Gholeshwar (together with the land, trees and incidents thereof)[(herein after referred to as the suit property 1(a)].

Suit property 1(b):- The following property is described as such i.e., an area of 2 H 53 R, assessed @ Rs.1.18 Ps out of the Gat No.119 [(i.e., suit property 1(a)] bounded on or towards East:- Talav Pad and Odha, West:- Land of one Gaykar, South:- Odha patra and forest land, and North:- Land of Ishwar Gunda i.e., the ancestral land of the plaintiff (together with the rights and incidents).

The suit property 1(b) is owned by defendants 1 to 8. The AoS without possession has been executed by defendant 1 in favor of the plaintiff, which is the subject matter of the AoS.

Suit property 1(c):- (as per the plaint)

bounded on or towards East:- Talav Pad and Odha,

West:- Land of one Gaykar,

South:-Land of defendants 1 to 7 out of the same property and beyond that Odha patra,

North:- Land of defendant 8(together with the rights and incidents)

Defendants 1 to 8 executed the AoS in favor of the plaintiff in respect of suit property 1(b). After the execution of the AoS, defendant 8 has sold some portion out of the suit property 1A, as a part of specific performance/compliance of the AoS, to the plaintiff vide registered sale deed dt.20/08/2015 [(the said property is referred to as the suit property 1(c)].

Suit Property 1(d)

An area admeasuring 1 H 26.5 Sq.Mt, assessed @ Rs.0.59 Ps, agricultural land bearing Gat No.119, situated at Mouje Gholeshwar, bounded on or towards East:- Talav Pad, and Odha,

West:- Land of Gaykar,

South:- Odha Patra and forest land,

North:- Land of the plaintiff (the land purchased by the plaintiff from defendant 8) (which is the subject matter of the suit/AoS).

3 It is averred that defendants 1 to 8 intends to sell the suit property 1(b) in 2006. The plaintiff contacted defendants 1 to 8. The plaintiff is the contiguous owner to the Gat No.119 and it was convenient to him. The terms of the sale, were settled between them. The sale consideration of Rs.1,12,000/- (Rs One Lakh Twelve Thousand only) was settled. The AoS (without possession) was duly executed into by and between them and registered with the Sub-Registrar, Jath. Defendants 1 to 8 received the substantial consideration of Rs.1,00,000/- (Rs One Lakh only). The subject matter of the AoS, is of restricted tenure i.e., the requisite permission of the competent authority, under Section 43 of the Maharashtra Tenancy and Agricultural Land's Act, 1949 (the Act) before sale is mandatory. It was agreed and settled that prior to the sale, the requisite permission under the Act, has to be obtained and the sale to be completed within a month of obtaining of the same. The permission was to be obtained by defendants 1 to 8. The plaintiff was/is ready and willing to perform and thereby complete the transaction.

4 It is further averred that after 03/06/2006 the plaintiff was constantly in contact with the defendants and requested them to obtain the requisite permission. Defendants 1 to 8 hoondwick, the request on one pretext or the other. Defendants 1 to 8 told that they are trying to obtain the permission, is in the vogue, and promised to obtain the same. The plaintiff and defendants 1 to 8 are from the same village and that is why the plaintiff kept requesting them.

5 After the AoS, defendant 8 purchased the shares of Nivrutti Narade, and Shahaji Narale's shares in the Gat No.119. In 2015, defendant 8 offered to sale his ancestral share, and that of Nivrutti's and Shahaji's shares (purchased from them) for sale, an area of 1 H 26 R jointly owned by them for carrying out family obligations etc., Defendant 8 has added his share to the subject matter under the AoS. The plaintiff agreed to purchase an area of 1 H 79 R owned by defendants 1 to 7, for the existence of the AoS for a valuable consideration of Rs.3,80,000/- (Rs Three Lakh Eighty Thousand only). Defendant 8 obtained the requisite permission from the competent authority vide order bearing No.43/SR/83/2015 dt.31/07/2015

(the order) under the Act. The plaintiff got the sale completed with defendant 8 on or about 20/08/2015. The area mentioned in the sale deed, is the suit property 1(c). The suit has been filed for specific performance of the area, by deducting the area sold by defendant 8 to the plaintiff, which is described as the suit property 1(d). The plaintiff requested defendants 1 to 7, who avoided to specifically perform their part and complete the sale. The plaintiff issued a notice dt.30/07/2015 through his advocate, calling upon defendants 1 to 8 to obtain the requisite permission. Defendants 9 to 12 are the co-owners in the property, who have been arrayed to avoid any technicality. Defendant 9 is sister of the plaintiff and defendant 10 is wife of the plaintiff. An area of 0 H 5 R has been gifted by defendant 10 to the Gram Panchayat, Sanmadi and therefore, defendant 12 has been arrayed to avoid any technicality. No relief has been sought against defendants 9 to 12. The plaintiff is ready and willing to perform the part of the contract. The plaintiff is depositing Rs.12,000/- (Rs Twelve Thousand only) which is the part consideration remaining unpaid. Hence, the present suit.

6 **Brief contentions of defendants 1,2,4,5,and 7:-** The claim of the plaintiff has been denied and disputed by filing ws cum say below **Exh.25.** The claim has been combated on various counts. It has been denied and disputed that the contesting defendants ever entered into or executed the **AoS.** for consideration. It has been denied and disputed that the contesting defendants ever signed the AoS, which is a false/fabricated and a document without consideration. The description of the suit property(ies) has/have been disputed and it has been contended that the same is/are not identifiable. It has been disputed that the plaintiff paid and/or the contesting defendants received the part of the consideration or otherwise. It has been disputed that the contesting defendants offered to sale, the suit property(ies) to the plaintiff. It has been disputed that defendant 8 has sold some area to the plaintiff, under the sale deed. There is a collusion between the plaintiff and defendant 8. The contesting defendants are illiterate, who were taken by the plaintiff, who is an highly educated amongst them and is in Govt., service, to the office of the Sub-Registrar, under the pretext of completing a transaction of 2004 and got their thumb impressions etc., on 03/07/2007 on a document. Defendant 3 is the brother of defendants 1, 2, 4, and 5 and defendant 7 is the son. The plaintiff is the step cousin brother of the contesting defendants 1,2, 4, and 5. The plaintiff has not approached this Court with clean hands. The suit property has been received by the contesting defendants' pre-decessor under Section 32(G) of the Act. There is no prior permission before the sale. Therefore, the **AoS** is invalid. The

plaintiff has not arrayed the necessary co-sharers in the suit, which is a case of non-joinder of necessary parties. Hence, the suit is opposed.

7 Brief contentions of **defendant 3**:- Defendant 3 has admitted (adopted) the ws cum say of defendant 6 by filing a pursis below **Ex.48**.

8 **Brief contentions of defendant 6**:- The ws cum say is below **Ex.29**. The claim has been denied and disputed. The description of the suit property(ies) has/have been denied and disputed. It is contended that the suit property under the AoS, is non-existent. There is no partition between the co-sharers. A suit bearing RCS 293/2014 for partition is pending consideration between the co-sharers viz., Nivrutti Mahadev Narade and his children, Tanaji and Mahadev. The plaintiff and defendants 1 to 9 herein have been arrayed as a party to the said partition suit. The plaintiff has suppressed the said fact and therefore, not entitled to any relief. It has been admitted that the suit property is owned and possessed by the contesting defendants. The execution of the AoS, the payment and/or receipt of the part consideration etc., have been stoutly denied and disputed. The other contentions are as raised by the other contesting defendants.

9 **Defendant 9** has admitted the claim by filing application along with an affidavit (without oath/affirmation) dt.03/11/2018. The said application and affidavit have not been exhibited. There is no authenticity as to the identity of defendant 9 or the contents thereof. The affidavit is not affirmed. Defendant 9 is duly served and caused appearance, but for absence of defendant 9 and the above technicality, now it has to be presumed that either defendant 9 is not ready to contest or admitted the claim.

10 **Brief contentions of defendant 8**:- The relation inter se the plaintiff and defendants 1 to 9 has been admitted. The claim has been admitted. It has been contended that defendant 8, Ishwara (the plaintiff's father), and Sopan (father of defendants 1 to 7) are brothers. Sopan was deceased at the time of execution of the AoS. Defendants 1 to 7 are the L.Rs of the deceased Sopan. Ishwara, agreed to sale to defendant 3, his agricultural land in exchange of his land. Accordingly, the AoS was executed in favor of defendant 3. The AoS required signature/consent of the sisters of defendants 1 to 3 i.e., defendants 4 to 7 and therefore the same could not be executed/fulfilled. After the AoS, Ishwara passed away. Defendants 1 to 7 agreed and thereby executed the AoS in favor of the plaintiff and further the suit property was possessed by the plaintiff. Defendant 8 was present during

the execution of the AoS, along with defendants 1 to 7. Defendant 8 received notice from the plaintiff and accordingly, executed the sale deed in favor of the plaintiff. Hence, the claim of the plaintiff has been admitted.

11 The plaintiff has relied upon the following evidence in the form of affidavit in lieu of examination-in-chief/ oral evidence viz.,

Sr.No	Particulars of the witnesses	Exhibit
1	Vitthal Narade/ the plaintiff/PW1	33
2	Ashish Dipak Desai/Forensic Expert/PW2	61
3	Vijay Laxman Jadhav/PW3	67
4	Ramkrushna Mahadev Narade/PW4	66

12 The plaintiff has relied upon the following documentary evidence viz.,

Sr.No	Particulars of the documents	Exhibit
1	VF No.7 and 12	8
2	AoS	39

13 The plaintiff has closed further evidence below Ex.40 and additional evidence below Ex.73 (on additional issue).

14 The contesting defendants have relied upon the following evidence in the form of affidavit in lieu of examination-in-chief/ oral evidence viz.,

Sr.No	Particulars of the witnesses	Exhibit
1	Namdev Sopan Narade/ Defendant 3/DW 1	50

15 The contesting defendants have not independently relied upon any documentary evidence (i.e., to say relied upon the material on the record).

16 The contesting defendants have closed their further evidence below Exh.80.

17 Defendants 3 and 8 have closed their evidence below Ex.74, and 77 respectively.

18 Heard both the sides at length. Gone through the short written of arguments on behalf of the plaintiff (Exh.85).

19 To the following issues/points for determination (Exh.33) framed by the Ld. Predecessor and the additional issue framed by this Court, I record my findings together with the reasons thereof:-

Sr.No	Points for determination	Findings
1	Whether plaintiff proves that defendants 1 to 7 agreed to sale the suit property to him for Rs.1,12,000/- by executing an agreement to sale dt.03/07/2006?	In the affirmative
1A (additional issue)	Whether the suit property is properly described?	No
2	Whether the plaintiff proves that he paid Rs.1,00,000/- to defendants 1 to 8 as earnest money at the time of agreement to sale?	In the affirmative
3	Whether defendants 1, 2, 4, 5, and 6 prove that the agreement to sale dt.03/07/2006 is void and registered by cheating them?	In the negative
4	Whether plaintiff proves that he was and is ready and willing to perform his part of agreement?	No
5	Whether plaintiff is entitled to specific performance?	No
6	Whether plaintiff is entitled to possession of the suit property?	No
7	Whether the plaintiff is entitled in alternative to refund of earnest amount of Rs.1,00,000/- with interest @ 15% from 03/07/2006?	No
8	Whether the suit is within limitation?	No
9	Whether the plaintiff is entitled to compensatory costs of Rs.50,000/- each from the plaintiff?	No
10	What order and decree?	As per the final order.

20 Admitted facts:-

- The date of execution of Ex.39 is 03/06/2006.

- The facts are governed by the Pre-amended Sections 16 etc., of the Specific Relief Act, 1963 (the SR Act) (amendment w.e.f 01/10/2018)
- For the facts governed by the pre-amended the SR Act, a decree of specific performance is discretionary relief.
- Ex.39 does not mention any period for the performance that is to say, Part II of the Article 54 of the Limitation Act, 1963 has to be considered.
- The plaintiff claims Ex.39 to be the AoS, while the contesting defendants have stoutly denied the existence, validity and/or having executed the AoS or the signatures/L.H.T.I (s) thereon.
- The original Ex.39 has been produced by the plaintiff.
- The fact of the plaintiff having issued a notice to the contesting defendant is admitted.
- Defendant 8 has belatedly (after the evidence of the contesting defendants) filed his written statement cum say and sought to admit the claim of the plaintiff.
- Defendant 8 has been examined as a witness by the plaintiff.
- Defendant 7 has passed away on 09/08/2021.
- The relation inter se the plaintiff and defendants 1 to 10 is an admitted fact.
- The plaintiff has claimed possession and therefore, the plaintiff does possess, the subject matter of Ex.39.
- The sale/sale deed by defendant 8 in favor of the plaintiff is a matter of fact and record.
- The suit property or suit property 1(d) is of restricted tenure.
- Defendant 8 obtained the requisite permission from the competent authority under the Act, on 31/07/2015.
- The facts have to be examined from the angle, if Ex.39 is the AoS or not vis-a-vis the issue of limitation.

Reasons**Points 1 to 9**

21 The above points for determination, are concerned, being inter-linked, are taken up for hearing and discussion together, for the sake of brevity and convenience.

22 In **Kamal Kumar Vs Premlata Joshi (2019) 3 SCC 704** Hon'ble the Apex Court has reiterated the essential to be proved in a suit for specific performance namely i) existence of valid concluded contract ii) readiness and willingness of plaintiff to perform his part of contract iii) plaintiff performing his part of contract and its extent and manner, and whether such performance in consonance with terms of contract iv) whether it is equitable to grant relief of specific performance regarding suit property or it causes any hardship to defendant, and if yes, how and in what manner such relief can be granted and v) entitlement of plaintiff to any other alternative remedy such as refund of earnest money with interest, etc and on what grounds such relief can be granted **(Pre-amended the SR Act)**.

23 Pw1 has reiterated the facts in the plaint by way of his affidavit in lieu of examination in chief. The plaintiff/Pw1 has testified the document below Exh.39 to be the **AoS**. The plaintiff/Pw1 came with a theory of execution of the **AoS** below Exh.39. The contesting defendants have denied and disputed the very existence of the document Ex.39 to be the AoS or having put their signatures/LHTI. Therefore, the proving of the very existence of a valid agreement is a sine qua non for passing a decree suit for specific performance. This inter-alia includes the description of the subject matter.

24 As per the plaintiff/Pw1, the subject matter under the AoS is the suit property 1(d) after deducting the area sold by defendant 8 to the plaintiff. The entire Gat No.119 is described by suit property 1(a). The contesting defendants contended having signed the document under misconception and on being misled by the plaintiff. The factum of the execution of the sale deed by defendant 8 in favor of the plaintiff, is a matter of fact and record. The contentions of the plaintiff may be therein that the execution of the sale deed by defendant 8 in favor of the plaintiff was by way of part performance etc., the fact remains, it is in respect of the undivided portion of the whole Gat No.119. Admittedly, defendant 8 has undivided share in the Gat No.119. It is settled law that an undivided share can be sold by the co-

parceners/co-owners, but the remedy lies, is to file a suit for partition. Therefore, it is a mute question, as to how the four boundaries came to be mentioned in the sale deed of defendant 8.

25 During cross-examination of Pw1, a fact is brought on the record that there is no partition of the suit property 1(a) and suit property 1(d). It has been admitted that the sale deed by defendant 8 in favor of the plaintiff, is without the consent of the contesting defendants. This when considered with the VF 7 and 12 of the Gat No.119, a fact is clear that it was (at the relevant time) jointly owned and possessed by the contesting defendants and defendant 8. Therefore, the carving out of an undivided area out of the Gat No.119, without defining of the four boundaries, cannot be justified in the absence of partition between them. That is to say, though the shares are undivided and uncertain, the sale in the absence of partition i.e., specific shares may not be justified.

26 The defence of the contesting defendants as to Ex.39 puts a burden on them to prove the said fact.

27 Pw2 has been examined to prove the factum of the due execution of the AoS, who is a forensic expert, who deposed that he is doing business/work as a Forensic Expert having M.Sc (Criminology) and Forensic Scientist from Dharwad University and running a firm under the name and style M/s Dristi Forensic OPC Pvt. Ltd., Kolhapur at Kolhapur. The plaintiff handed over to him, the certified copies as the documents for examination, of which record has been maintained. He examined the signature of Sopan Narade on the Vakalatnama, Pursis, Application, and the affidavit and on due comparison of the same opined that to be of the same person i.e., Sopan Narade. The detailed procedure is mentioned in his report. He prepared a report, which bears his signature and seal of M/s Dristi Forensic OPC Pvt. Ltd., Kolhapur. The report was handed over to the plaintiff. However, neither the report nor any documents have been exhibited during examination-in-chief of the said witness.

28 From the testimony of Pw2, a fact is clear that he has examined the signatures on the certified copies. It has been admitted that he not examined the original document. It is a trite law, that unless the original document is examined vis-a-vis the disputed document containing the signature(s), it may not be relied upon. In such a case, the accuracy and consequently the opinion on the said document may be adversely affected. A photo copy of

the document may vary in writing/stroke, the age of the document, certainly have bearing on the forming of an opinion. Even otherwise, the opinion of such an expert is merely advisory and the Court is not bound to accept it. The same has to be considered in the peculiar facts and circumstances of the case. As a matter of fact and record, the detailed procedure of examining the signatures by the expert/Pw2 has not been stated during examination-in-chief and therefore, mentioning of the same in report may be of little assistance to the plaintiff and particularly when the report has not been testified and/or exhibited.

29 Pw3 is the stamp vendor who sold the stamp on which the **AoS** was written. He deposed that he is a stamp vendor having a licence and doing the business since 1992. On 03/07/2006 one Ramkrushna Narade came to purchase a stamp paper. He obtained the signature of Ramkrushna on the register and the stamp paper. The stamp paper was issued to purchase a property.

30 On perusal of Ex.39 the same appears to have been sold by Pw3. Pw3 does not have any knowledge about the transaction. A fact is developed during cross-examination of Pw3 that he obtained the signature of Ramkrushna on the stamp and the register is false. However, this may not affect the merits of the case. Ex.39 is a registered document and therefore, it has presumption under the Indian Registration Act, 1908 (the Registration Act).

31 Pw4 is the defendant 8 who deposed and reiterated the facts in his written statement and sought to support the plaintiff. Pw4 during cross-examination admitted that his separate share has not been specified/mentioned in the **AoS**. Further, it has been admitted that there is no mention of the separate properties of Pw4 i.e., himself, Pandurang, Aatmaram, Namdev, Dhondubai, Janabai, Sayabai, Harubai, Kalpana, and Dipali. Therefore, this is suggestive of the fact that without therein being the separate shares/properties of the above persons, the sale deed of specified portion with the four boundaries therein, may not be sustainable. Pw4 admitted that the four boundaries in the **AoS** below Ex.39 are false and that there is a collusion between the plaintiff and himself. Therefore, this unerringly goes against the plaintiff and strengths the theory of non-partition of the suit property and consequently make the identification of the suit property 1(d) under a serious cloud.

32 Dw1 has examined himself and reiterated the contentions in the written statement. It has been suggested and admitted that the nature of the suit property is of restricted tenure and for which permission of the competent authority is required. It has been suggested that prior to the sale, the consent of the members of the HUF is necessary. The suggestion that deed contains his signature and name has been admitted and this is suggestive of the fact of execution of the AoS. Therefoer, the defence of the contesting defendants fails. Even otherwise, the evidence of Dw1 is not sufficient to rebut the presumption of execution of the registered document.

33 It has been admitted by Dw1 that the plaintiff has issued a notice throught his advocate to the defendants. Though, there is a reference of a notice issued by the plaintiff to the contesting defendants, the fact remains the notice has not been exhibited. It is argued on behalf of the the plaintiff that the factum of issuing of notice and receipt by the contesting defendants during cross-examination suggest that the plaintiff was ready and willing to perform the part of contract and the contesting defendants failed to perform their part. Therefore, it would be argued that the same amounts to an admission of the contents of the notice. A fact remains, mere issuance of a notice may be a circumstance(s) to suggest readiness or willingness however it is not a trite law. Merely because the factum of issuance and receipt of the notice has been admitted does not ipso facto mean that the contents therein are admitted. There is no law providing for mandatory reply to the notice and failure to issue such a reply invariably amounts to an admission.

34 When the plaintiff came with a theory of execution of the AoS below Ex.39 and relied upon part 2 of the Article 54 of the Limitation Act, the fact remains, the burden lies upon the plaintiff to prove the same. On perusal of the AoS, it is clear that the sale was to be completed on obtaining of the requisite permission. The notice by the plaintiff has been issued (as mentioned in the plaint) on 30/07/2015. A certified copy of the sale deed by defendant 8 in favor of the plaintiff is produced below Ex.44/Sr.No.2. On perusal of the same, it is clear that at page 8, the requisite permission has been obtained by defendant 8 on 30/07/2015. The plaint (Ex.1) mentions that after 03/06/2006 the plaintiff constantly contacted and requested the contesting defendants to fulfil their part/obligation. During cross-examination of the plaintiff/Pw1, a fact is developed on the record, that after 03/07/2006 he made such a request after 6 months for the first time and the defendants refused the same. Therefore, it is only in July 2007 such

demand was made, to fulfil the obligation and it has been refused. Therefore, the cause of action triggers on demand being made and refusal to the plaintiff. Therefore, if the facts are considered from that the angle of Part I and II of the Article 54 of the Limitation Act, the suit filed on 03/05/2016 is hopelessly barred by limitation. Under Part I and II of the Article 54 of the Limitation Act, provides for limitation of 3 years i.e., to say the date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused. The AoS does not fix the date of performance, but upon obtaining of the requisite permission. No such permission has been obtained, but it has been refused somewhere in January, 2007. Therefore, technically, the limitation period expired on in or around January 2010. The same cannot be stretched to 2016. It is settled law that issuance of notice, does not stop the running of the period of limitation, once it has been triggered. For the above discussion, and reasons, though, the plaintiff proves the due execution of the AoS below Ex.39 nevertheless the claim is barred by limitation. Therefore, the plaintiff is guilty of delay and laches and therefore, I am not inclined to exercise discretion for the remedy being discretionary.

35 It is settled law that while willingness refers to the mental condition, readiness refers to the financial condition. The mentioning in the plaint, that the plaintiff is depositing Rs.12,000/- (Rs Twelve Thousand only) however, no deposit is made. Though, such deposit is not a condition precedent to infer the factum of readiness or willingness, the fact remains, the non-depositing of the part/remaining amount of the sale for 10 years since the filing of the suit, it has to be inferred that there is no willingness or rather financial condition of the plaintiff. Even otherwise, when the claim is barred by limitation, the remedy cannot be enforced. Therefore, the plaintiff is not entitled to any of the reliefs claimed.

36 The plaintiff has relied upon the following case laws viz.,
i) Prem Singh Vs Birbal and Ors (2006) 5 SCC 353.
ii) Beemaneni Maha Lakshmi Vs Gangumalla Appa Rao 2019 SAR (Civil) 681.
iii) Kerba Ambadas Dehngle Vs Digambar Ishwara Chavan 2019(5) ALL Mr 121.

iv) Vidhyadhar Vs Manikrao AIR 1999 SC 1441.

37 In Prem Singh (supra) the issue was in respect of a cancellation of a registered document and the presumption of a valid execution of a registered document. Now reverting to the facts, at the hand, there is no relief of cancellation of the registered AoS. Even otherwise, this Court has held that the execution of the AoS has been duly proved.

38 The law in Beemaneni (supra) is clearly distinguishable in facts in as much as the the non-depositing of the balance consideration was not held to be a condition precedent to infer readiness and willingness. In the peculiar facts, the mentioning of having depositing the balance consideration and non-depositing or even making an attempt to deposit over a period of 10 years, suggest that the plaintiff has no bona-fide intentio of readiness and willingness. It is settled law that the readiness and willingness should continue till passing of a decree of specific performance.

39 In Kebra (supra) the law was in the context of defence of money lending transaction. Therefore, when no such theory or contention has been raised by the contesting defendants, the same may of little assistance.

40 In Vidhyadhar (supra) relied upon is in the factual context of not entering into the witness box giving rise to adverse inference. Now reverting to the facts at the hand, the contesting defendants have entered evidence by way of defendant 3 as Dw1. Further, this Court has negated the theory of misleading or the like in executing the AoS.

41 For the above discussion and reasons, though the plaintiff proves the due execution of the **AoS**, nevertheless not entitled to the equitable relief for not claiming partition, failure to prove readiness and willingness to perform the part/obligation, till passing of the decree, having claimed to have possession under the AoS, during cross-examination contending divesting of possession, claiming relief of possession without the theory of dispossession or subsequent dispossession and/or mischievously putting/incorporating a relief of perpetual injunction in the plaint (without seeking amendment in the plaint) etc., suggest that the plaintiff has not approached this Court with clean hands. Finally, when the relief is found to be barred by limitation, the discretion to direct refund of earnest amount

cannot be directed. Therefore, the suit must fail. Accordingly, all the points are answered. Costs follows the event. Hence, the following

Order

The suit stands dismissed with costs.

2 Decree be prepared accordingly.

Jath
Date:-06/08/2026

(Sanjay P.Bunde)
Jt C.J.J.D, Jath