


<b>CNR NO. MHSN170000602020</b> 	Received on : 15.07.2020
	Registered on : 15.07.2020
	Decided on : 07.03.2026
	Duration : Ys. Ms. Ds. 05 07 20

**IN THE COURT OF ADHOC DISTRICT JUDGE-1, VITA**  
**(Presided over by Smt. U.V. Indapure)**

**REGULAR CIVIL APPEAL No. 550 /2024**  
**(Old Reg. Civil Appeal No. 149 /2020)**

**Exh. No. 76**

1. **Shri. Vishvanath Vithal Mali** )  
Age - 33 Years, Occu. Agriculture )  
)
2. **Shri. Vishal Vitthal Mali** )  
Age - 32 Yrs. Occu. - Agriculture )  
Both are R/o. Koshti Galli, Atpadi )  
Tal. Atpadi, Dist. Sangli.

**Appellants**

**VERSUS**

1. **Shri. Popat Ramchandra Kasar** )  
Age - 65 Yrs. Occu. - Agriculture )  
Resident of Opp. MSEB Atpadi, )  
Tal. Atpadi, Dist. Sangli )

**Respondent**

**Appeal u/s. 96 and Rule 41 of Code of**  
**Civil Procedure**

For Appellant Nos.1 and 2 : Adv. Shri. R.B. Salunkhe  
For Respondent : Adv. Shri. B.P. Pathak

### **JUDGMENT**

(Delivered on 07.03.2026 )

The appellants have preferred this appeal against Judgment and decree passed by Ld. 7<sup>th</sup> Jt. Civil Judge Sr. Dn. Sangli, in Special Civil Suit No.227/2014 dtd.13.02.2020 whereby the learned Trial Court has decreed the suit with costs.

2. Brief facts necessary to decide the present appeal are as under: Hereinafter, parties are referred to as per their original status.

3. The plaintiff has filed suit for specific performance of contract dtd.17.11.2011 and alternatively prayed that if it is not possible to execute sale deed the earnest money of Rs.60,000/- be returned with interest @ 18% p.a. from the date of agreement till realization of the amount. The land Gat No.2300 admeasuring 1 H 12 R, out of it 3 Ane 4 pai share means 23 R land situated at Atpadi, Dist.Sangli having boundaries, East-land of Ganpati Sadashiv Deshpande and Bhaskar Sadashiv Deshpande, south - land of Jawhar Shankar Deshmane, west - land of Hanumant Shankar Mali and North land of Smt. Asha Janardan Jhende (Hereinafter it is called as "suit property" for

the sake of brevity.)

4. It is contended that plaintiff is permanent resident of village Atpadi and doing agricultural work. Defendants are also resident of village Atpadi and having ancestral property which is described as suit property. The defendants decided to sale the suit property and accordingly contacted to the plaintiff. The defendants decided to sale suit property to the plaintiff for consideration of Rs.7,50,000/- and accordingly, on 17.11.2011 an agreement executed between them. On 17.11.2011, the plaintiff paid earnest money of Rs.60,000/- to the defendants and it was decided to pay remaining amount of Rs.6,90,000/- at the time of execution of sale deed. Mother of the defendant namely Vimal Vithal Mali and wife of defendant No.1 namely, Kalpana Vishwanath Mali signed said agreement as consenting party.

5. According to the plaintiff, the suit property was recorded as re-granted land, therefore, the defendants agreed that they will take permission of Competent Authority which is required to sale the suit property, within 11 months from the date of agreement. The defendants also agreed that he will bear expenses required to take permission of Competent Authority. The defendants never tried to take permission, so also it was not informed to the plaintiff that which steps was taken by the

defendants to get permission of Competent Authority. The plaintiff requested to defendants to get execute sale deed but defendants avoided to execute the sale deed, hence on 16.07.2014, the plaintiff issued notice to the defendants through advocate. It was informed to the defendants to remain present in the office of Registrar on 31.07.2014 and to execute sale deed. The defendants refused to accept notice, therefore cause of action arose to file present suit. Hence, the plaintiff constrained to file present suit for aforesaid prayer.

6. Defendant Nos.1 and 2 have filed written statement below Exh.30 and denied contents in the plaint. According to defendants, the plaintiff and Kailas Patil are doing illegal money lending business. They were not ready to give hand-loan without accepting security. The plaintiff obtained blank stamp from the defendants for giving hand-loan. It is contented that the plaintiff has prepared false agreement to sale and it is not signed by the defendants. The defendants never executed any agreement to sale in favour of the plaintiff, therefore question of seeking specific performance of contract does not arise. The defendants are ready to repay amount of hand-loan taken from the plaintiff. The defendants have not received notice of the plaintiff and the plaintiff in collusion with the postman, obtained false acknowledgments. The defendants are residing outside of station for work and they have not been meet the plaintiff since

last 3 years. The plaintiff has taken disadvantage of absence of the defendants and filed false suit. The defendants have prayed to dismiss the suit with costs.

7. The learned trial court after considering evidence of both sides and submission of both advocates, decreed the suit with costs and directed to defendants to execute sale deed by accepting remaining consideration amount as agreed. It is also ordered that if defendants failed to get execute the sale deed the plaintiff is entitled to get execute it through intervention of the court. The learned trial court has rejected the alternative relief sought by the plaintiff.

8. Being aggrieved said judgment and decree the original defendant Nos. 1 and 2 have preferred this appeal on the ground that, the learned trial court has not properly interpreted the relevant provisions of law and evidence on record. The learned trial court erred in not framing proper issues. The Ld. Trial court has not considered that the alleged agreement dtd. 17.11.2011 is not legally enforceable against this defendants, so also alleged agreement is not admissible as per Article 25 of Schedule II of Bombay Stamp Act and 34 of the said Act. The Ld. Trial Court has wrongly held that plaintiff has paid earnest amount of Rs.60,000/- to the defendants and the defendant agreed to sale suit property to the plaintiff for

consideration of Rs. 7,50,000/- and thereby executed agreement to sale on 17.11.2011. The Ld. Trial Court has not considered that plaintiff was not having sufficient money and he was unable to perform his part of contract. Defendant No.2 sold land admeasuring 0.11.66 R out of the suit property to Shri. Dhananjay Tukaram Patil by way of sale deed dtd. 14.09.2012, the Ld. Trial Court has not considered this fact. The Ld. Trial Court failed to consider basic principle that passing decree of specific performance is discretionary and in all cases court is not bound to grant such relief, because it is lawful do so. The appellant has prayed appeal be allowed with costs and judgment and decree passed by Ld. Trial Court be quashed and set aside.

9. Upon rival pleadings of the parties and submission of the learned counsel for the appellants and the respondent, following points arise for my determination. The points along-with my findings thereon are as under -

<b>Sr. No.</b>	<b>P O I N T S</b>	<b>FINDINGS</b>
1.	Whether the plaintiff proves that defendants agreed to sale suit property for consideration of Rs.7,50,000/- ?	In the affirmative.
2.	Whether the plaintiff proves that the defendants executed agreement to sale in his favour on 17.11.2011 ?	In the affirmative.
3.	Whether the defendants prove that they obtained hand-loan from the	In the negative.

	plaintiff ?	
4.	Whether the plaintiff proves that he paid earnest amount of Rs.60,000/- at the time of execution of agreement to sale to the defendants ?	In the affirmative.
5.	Whether the plaintiff proves that he was and is ready and willing to perform his part of contract ?	In the affirmative.
6.	Whether the plaintiff proves that defendants have not performed their part of contract by executing sale deed in his favour ?	In the affirmative.
7.	Whether impugned judgment and decree need interference ?	No
8.	What order and decree ?	As per final order.

### REASONS

#### POINT NOS. 1 TO 6 :-

10. In order to avoid repetition and all points are interlinked with each others, so all points are taken together for consideration.

11. Ld. Advocate Shri. R.B. Salunkhe for the appellants has submitted, the plaintiff has not complied provision of Section 16(c) of Specific Relief Act. It is duty of the plaintiff to prove that he was and is ready and willingness to perform his part of contract. The material admissions of the plaintiff clearly

shows that he was not having sufficient fund to pay remaining amount of consideration. The plaintiff has not shown when he approached to the defendants and informed to execute sale deed in his favour. The plaintiff deposited remaining amount of consideration after filing execution petition which shows that the plaintiff is not due diligent with his right. The Ld. Trial Court has not considered material admission of the plaintiff and wrongly held that plaintiff has established execution of agreement to sale, paid earnest money and ready and willing to perform his part of contract. Ld. Advocate for the defendants has placed reliance on the following case laws -

1) **Pyadi Ramana @ Ramulu Vs. Davarasety Manmadha Rao, AIR 2024 Supreme Court 3242**, wherein the Hon'ble Apex Court has held that, " Suit was filed as fag end of expiration of limitation. Plaintiff failed to show any steps taken by him during the period from the date of agreement till date of filing of suit, the plaintiff was not entitled for equitable relief."

2) **U.N.Krishnamurthy through Lrs. Vs. A.M. Krishnamurthy, AIR 2022, Supreme Court, 3361**, wherein the Hon'ble Apex Court has held that, "plaintiff deposited balance sale consideration in court after 7 years of alleged sale of property. Making subsequent deposit of balance consideration after laps of 7 years would not establish his readiness to perform his part of contract."

3) **Vijay Kumar and others Vs. Om Prakash, AIRonline 2018, S.C. 357**, wherein the Hon'ble Apex Court has held that, " Plea of plaintiff that he was ready with money on date when sale deed was to be executed. Failure on part of plaintiff to adduce

any documentary evidence to prove that he was ready with money. The conduct of plaintiff shows that he was not ready to perform his part of contract. ”

**12.** On the other side Ld. Adv. Shri. Pathak for the respondent has submitted it is duty of the defendants to obtain permission of Competent Authority and to execute sale deed of suit property in favour of the plaintiff. The plaintiff is having landed property and he can collect money by selling that land. The plaintiff has deposited consideration amount in execution petition. In the cross-examination of the plaintiff, not a single question asked by the defendants about obtaining hand-loan from the plaintiff and about preparing forged document of agreement to sale. The defendants have not proved that they obtained loan from the plaintiff. The plaintiff was and is ready and willingness to perform his part of contract, but defendants have not been taken permission of the Competent Authority to sale the suit property, therefore, the plaintiff could not perform his part of contract. The plaintiff has filed suit within limitation. The agreement to sale is proved. The plaintiff has established the case, therefore the Ld. Trial Court decreed the suit with costs. The Judgment of the Ld. Trial Court is correct, therefore, no need to interfere in said judgment and decree of trial court.

**13.** Advocate for the respondent has placed reliance on the following case laws -

1) **Balwantgir Ganpatgir Giri through Lts. Vs. Manasi Construction and Developers and others.. reported in 2006 (5) Mh.L.J. 306**, wherein the Hon'ble High Court has held that, " An agreement which restrict delivery of possession on execution of sale deed cannot be construed to be a conveyance."

14. In order to substantiate his claim the plaintiff has adduced his evidence and reiterated contents of the plaint in it. He has stated on 17.11.2011 an unregistered agreement to sale executed between him and defendant in respect of suit property for consideration of Rs.7,50,000/- and he paid earnest money of Rs.60,000/- to the defendants. It was decided that defendants have to take permission of the Competent Authority as the land was re-granted land. The defendants have agreed they will obtain permission of the Competent Authority within 11 months from the date of agreement. The defendants neither take permission of Competent Authority nor take any steps to execute sale deed, therefore on 16.07.2014, he sent legal notice to the defendants through advocate. He informed to the defendant to remain present in the Sub-Registrar office Atpadi at 11 a.m. on 31.07.2014 and to execute sale deed.

15. The plaintiff has admitted in his cross examination, " माझ्याकडे १३ गुंठे शेतीचे क्षेत्र आहे व या जमीनीत काहीही पिक नाही. सदरची जमीन त्याच्या खरेदीची आहे. त्याने असेही मान्य केले दावा मिळकत इनामी

जमीन असल्याचे त्याने पाहिले नाही. गुंठेवारी मध्ये दावा मिळकत असून त्याचे खरेदीविक्रीचे व्यवहार होवू शकत नाही याची त्याला माहीती आहे. दि.१७.११.२०११ पुढील ११ महिन्यामध्ये प्रतिवादीकडे तोंडी स्वरूपात दस्त करून देण्याची मागणी केली याबाबत त्याच्याकडे वेगळा साक्षीपुरावा नाही. त्याच्याकडे रक्कम शिल्लक नसताना व त्याच्या बँक खात्यावर कोणतीही रक्कम शिल्लक नसताना दि.१७.११.२०११ रोजीचा करार व दि.१६.०७.२०१४ ची नोटीस दिली.”

**16.** Chandrakant (P.W. No.2) is attested witness on the agreement dtd. 17.11.2011. He has stated that defendant agreed to sale their share in ancestral property Gat No.2300 to the plaintiff. Accordingly, they decided in a meeting to execute an agreement on 17.11.2011. On that day, he was present and plaintiff paid earnest money Rs.60,000/-to the defendants. He has identified signatures of plaintiff and defendants as well as mother of defendant and wife of defendant No.1. The defendant failed to conduct cross-examination of this witness, hence his evidence remains unchallenged.

**17.** Sahebrao (P. W. No.3) has deposed similar fact which is stated by witness Chandrakant. In his cross examination, he has admitted he is chairman of Sidhanath Bigar Sheti Patsanstha Atpadi. There is loan account of the plaintiff in his society. The plaintiff has paid loan amount. He inquired with the plaintiff about the having consideration amount with him. He acquainted

with the plaintiff and the plaintiff is borrower of the society. He is unable to tell how many meetings conducted between the plaintiff and the defendants prior to execution of agreement.

**18.** Vishal (D.W.No.1) has deposed, the plaintiff was and is not ready and willing to perform his part of contract. The defendants obtained hand loan of Rs.60,000/- from the plaintiff and he is ready to repay said amount. He has denied execution of agreement. It is also denied that the plaintiff and the defendants decided that the defendants will take permission of Competent Authority for executing sale deed, within 11 months from the date of agreement. He has deposed, that defendant No.1 sold land admeasuring 0.11.66 R on 14.09.2012 by way of registered sale deed. He further deposed, the defendants are resident out of station, hence by taking disadvantage of said fact, the plaintiff executed forged document and filed false suit.

**19.** In the cross-examination, he has admitted that they did not lodge complaint against the plaintiff in the police station relating to obtaining their signatures on blank papers by the plaintiff. He also admitted the contents about selling 0.11.66 R land by defendant No.1 on 14.09.2012, are not mentioned in the written statement. In the written statement as well as in his affidavit, he has not stated that he is ready to repay borrowed amount of Rs.60,000/-. He is unable to tell financial position of the plaintiff. He is also not aware that the plaintiff is ready to

pay remaining amount of consideration in lump-sum.

**20.** A perusal of agreement dtd.17.11.2011 shows that, the defendants have signed on 5<sup>th</sup> page of agreement. Moreover, consenting party also put their signatures on it. There are recitals that the defendants have to obtain permission of Competent Authority within 11 months from the date of agreement. The plaintiff paid earnest money to the defendants when the agreement was executed. Here it is to be noted that there is no blank stamp submitted in the document called as agreement and the defendants have not signed on that blank stamp.

**21.** Thereafter, on 16.07.2014 the plaintiff sent notice through advocate and informed the defendant to remain present on 31.07.2014 at 11 a.m. in Sub-Registrar Office, Atpadi and to execute sale deed of suit property in his favour. The defendants have raised objection that they have not received notice of the plaintiff. Defendant No.2 in his affidavit has stated defendant No.1 executed sale deed on 14.09.2012 and certified copy of said sale deed is produced on record. A perusal of certified copy of sale deed dtd. 14.09.2012 goes to show that defendant No.1 has executed sale deed in favour of Dhananjay Tukaram Patil on 14.09.2012. If we perused address of Vishwanath Vithal Mali in the sale deed dtd. 14.09.2012 the address is mentioned as Atpadi, Tal. Atpadi, Dist. Sangli. The plaintiff issued notices to

the defendants on the same address and the concerned postman gave intimation to the defendants about the notice but the defendants did not collect the notice from the post office. On the contrary the defendant raised objection that the plaintiff in collusion with the postman prepared false documents of notice. This fact shows that the defendants deliberately avoided to collect notice issued by the plaintiff and raised objection that they have not received notice of the plaintiff.

**22.** The defendants straightway denied the execution of agreement to sale and it is their case that they obtained hand-loan from the plaintiff. Here, it can be said that nothing prevented to the defendants to take written document from the plaintiff about the hand-loan. The defendants have not specified on which date, for which purpose and in whose presence they obtained hand-loan from the plaintiff. The defendants have not either adduced oral evidence of witness or produce document to prove contents in the written statement.

**23.** The Ld. Advocate for the defendants has given more emphasis on the issue of readiness and willingness. It is repeatedly submitted that the plaintiff was and is not ready and willing to perform his part of contract.

**24.** A perusal of evidence on record shows that, firstly it

is responsibility of the defendants to bring permission of Competent Authority to make complete sale transaction. The defendants have not brought on record which steps were taken by them to seek permission of the Competent Authority. On the contrary, evidence on record shows the plaintiff orally requested and thereafter by issuing notice to the defendants informed to execute sale deed and to remain present in the Sub-Registrar office, Atpadi.

**25.** Another submission of Ld. advocate for the defendants that plaintiff was not having sufficient funds with him so that to purchase the suit property. He is not having landed property and cash amount with him. This fact clarifies he is not able to purchase the suit property. Here, it is to be stated that, though the plaintiff admitted in his cross-examination that on the date of execution and even at the time of issuing legal notice he was not having sufficient funds with him, but the in the cross examination of the defendant No.2, the plaintiff tried to bring that he has agricultural land and one shop was given on rent. Defendant No.1 has shown his inability to state about the financial position of the plaintiff as well as about the immovable property of the plaintiff. The defendants are seller and the plaintiff is purchaser, so can it possible that a seller sale his properly to the person who is not having sufficient funds to purchase the property ? In these facts and circumstances, the submission of learned advocate for the defendants that plaintiff

is not having sufficient money to purchase the suit property, is not acceptable.

**26.** The plaintiff agreed to pay remaining consideration amount at the time of execution of sale deed, but the defendants have not shown their readiness to perform their part of agreement. The plaintiff has deposited in the court remaining consideration amount and filed pursis below Exh. 66 on 02.01.2026 stating that on 07.03.2025, he deposited amount of Rs.6,90,000/- in the Court.

**27.** From the oral and documentary evidence brought on record by the parties, it seems that the plaintiff by adducing evidence of independent witness proved execution of agreement and payment of earnest money of Rs.60,000/-. The plaintiff has also shown his ready and willingness to perform his part of contract by issuing notice to the defendants. The defendants failed to take permission of the Competent Authority till filing the suit means the defendants are avoiding to execute sale deed of suit property in favour of the plaintiff. It seems that defendant No.1 executed sale deed on 14.09.2012 even he has knowledge about execution of agreement dtd. 17.11.2011. The conduct of the defendants clearly shows they did not take any efforts to obtain permission of the Competent Authority and to execute sale deed in favour of the plaintiff but they prevented the plaintiff from his legal right by executing sale deed in favour of

Dhananjay Tukaram Patil.

**28.** I have gone through cited judgments by the appellants. In all three cited judgments the Hon'ble Apex Court has observed that, continuous readiness and willingness is a condition precedent for grant of relief of specific performance. In the present suit, the plaintiff has proved that he was and is ready to perform his part of contract, but defendants avoided to perform their part of contract. In these circumstances, I state ratio laid down in the cited case laws are applicable to the case of the plaintiff.

**29.** The defendants have not brought any evidence on record to show that they obtained hand-loan of Rs.60,000/- from the plaintiff. According to the defendants, the plaintiff and one Kailas Patil are doing illegal money lending business and they are not having license of money lending. This pleading of the defendants shows that the financial position of the plaintiff is good. The defendants have raised two fold objection. One is that the plaintiff is money lender while another is the plaintiff is not having sufficient funds with him to purchase the suit property. This defence is self-contradictory. From the aforesaid contents in respect of money lending in the written statement, it can be inferred that the plaintiff has sufficient amount with him, therefore the defendants executed agreement to sale in favour of the plaintiff. The plaintiff was and is ready and willing to

perform his part of contract.

30. I have gone through the judgment and decree of Ld. Trial Court, the learned Trial Court has considered evidence appeared on record and submission of advocates of the plaintiff and the defendants. The learned trial Court properly considered the documents produced by the parties and came to right conclusion. In these facts and circumstances, the issues framed and findings given thereon by the learned trial Court are correct and proper, hence no need to interfere in the judgment and order passed by the Learned Trial Court. Accordingly, I accept submission of learned advocate for the respondents and answer point nos. 1 to 7 as above and as to point no.8, I pass following order -

**ORDER**

1. The appeal is dismissed with costs.
2. Record and proceeding be sent to Learned VIth Jt. C. J. Sr. Dn. Sangli

Appeal is decided and disposed of accordingly.

(Pronounced in open Court.)

Date :- 07/03/2026  
Vita

(Usha V. Indapure)  
Ad-hoc District Judge-1,  
Vita

CERTIFICATE

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

Name of Stenographer	: A. B. Kamble (Steno Grade-I)
Court	: Addl. Sessions Judge, Vita
Date of Judgment	: 07.03.2026
Signed by Presiding officer on	: 13.03.2026
Uploaded on	: 13.03.2026

