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	Decided on	:	18.07.2026
	Duration	:	Ys Ms Ds 10 11 08

**IN THE COURT OF CIVIL JUDGE SENIOR DIVISION PALGHAR,
AT : PALGHAR
(Before M. M. Mali)**

Regular Civil Suit No.126/2015
Exhibit No. : 90

- | | | | |
|----|---|---|-----------------|
| 1] | Nilesh Chandrakant Mhatre,
Age : 49 yrs., Occ. : Service | } | ... Plaintiffs. |
| 2] | Charushila Chandrakant Mhatre,
Age : 69 yrs., Occ. : Housewife,
Both residing at Kudan, Dasturipada,
Taluka and District Palghar. | | |

vs.

Suresh Pandurang Mhatre, Age : 61 yrs., Occ. : Service, Residing at Kudan, Dasturipada, Taluka and District Palghar.	}	... Defendant.

**SUIT FOR SPECIFIC PERFORMANCE
OF CONTRACT AND PERPETUAL
INJUNCTION.**

.....
Learned Advocate Mr. Jayesh Patil for plaintiffs.
Learned Advocate Mr. Suraj Jagtap for defendant.
.....

J U D G M E N T

(Delivered on 18th July, 2026)

Plaintiffs filed this suit for specific performance of contract and also for injunction to restrain the defendant from interfering with

plaintiffs' peaceful possession in the suit property and from creating third party interest in the suit property.

Brief facts of the suit are as under :

2] The plaintiff no.1 is nephew of defendant. Defendant agreed to sale the suit property for consideration of Rs.25,000/-. Accordingly, defendant received the amount and put the plaintiffs in possession of suit property from the year 1999. Defendant started claiming additional amount of Rs.5,000/-. Therefore, the written contract was executed between plaintiffs and defendant for sale of room admeasuring 12 feet x 15 feet for consideration of Rs.30,000/-. The plaintiffs further averred that they made and additional payment of Rs.5,000/- to the defendant. The document is not registered as the parties stands in near relation. Defendant gave confidence to the plaintiffs there is no hurdle of non-registration. Therefore, the plaintiffs continued in possession. However, in the year 2015, when the plaintiffs started improvement in the suit property, defendant started obstruction. Therefore, the plaintiffs approached before Village Redressal Authority which resulted in vain. Thereafter, defendant issued notice dated 08.04.2015, demanding the vacant possession of suit property. The plaintiff replied the said notice and filed this suit for specific performance of contract and for injunction.

3] Defendant vide Exh.16 filed his written statement and denied the plaintiffs' case. Defendant admitted the fact that the plaintiffs are in possession of suit property from the year 1999. Defendant admitted that he sent notice to the plaintiffs. Defendant averred that there is no such written contract. Defendant averred that plaintiffs are in permissive possession. Defendant further averred that plaintiff no.1 is his nephew. Therefore, considering the near relation, he allowed plaintiffs to reside in the suit property. Defendant denied the fact of passing of consideration.

Therefore, defendant averred that he is entitled for the vacant possession. Hence, defendant prayed for dismissal of suit with costs.

4] On perusal of rival pleadings of both the parties and on perusal of documents produced on record, my learned predecessor has framed following issues at Exh.18 and I recorded my findings thereon on the basis of reasons discussed hereinafter.

SR.No.	ISSUES	FINDINGS
1)	Whether the defendant agreed to sale the suit property for consideration of Rs.25,000/-?	Yes.
2)	Whether the defendant handed over the vacant possession to the plaintiff after receiving the consideration of Rs.25,000/-?	Yes.
3)	Whether defendant make an additional demand for Rs.5,000/- ?	Yes.
4)	Whether defendant made a written contract dated 05.01.2001 on 50 rupees stamp paper to sell the suit property to plaintiffs for consideration of Rs.30,000/- ?	Yes.
5)	Whether defendant handed over the possession of suit property by accepting the whole consideration ?	Yes.
6)	Whether plaintiffs had approached before Kudan Village Panchayat on 18.03.2015 and before Dispute Redressal Committee on 07.04.2015 for redressal of dispute between plaintiffs and the defendant ?	Yes.
7)	Whether defendant performed his partial part of contract dated 05.01.2001 by putting the plaintiffs in peaceful possession in the year 1999 ?	Yes.
8)	Whether the plaintiffs are entitled for the relief claimed in prayer clause (3) ?	Yes.

9)	Whether the plaintiffs are entitled for the relief claimed in prayer clause (आ) ?	Yes.
10)	Whether the plaintiffs are entitled for the relief claimed in prayer clause (इ) ?	Yes.
11)	Whether the plaintiffs are entitled for the relief claimed in prayer clause (ई व उ) ?	Yes.
12)	What order and decree?	Suit is Decreed.

REASONS

5] Plaintiffs in order to prove their case, filed affidavit in lieu of examination in chief of plaintiff no.1 at Exh.20, examined P.W.2 Rupesh Kishor Patil (Chairman of Dispute Redressal Committee) vide Exh.50 and P.W.3 Santosh Bandu Patil (Gram Sevak) vide Exh.53. Besides oral evidence plaintiffs have relied upon following documents;

Sr. No.	Documents	Exh.No.
1)	Assessment list for year 2015-16	30
2)	Application dated 18.03.2015 of plaintiff no.1 to Grampanchayat Kudan.	31
3)	Application dated 07.04.2015 of plaintiff no.2 to Grampanchayat Kudan.	32
4)	Legal notice dated 08.04.2015 issued by defendant to plaintiff no.1	33
5)	Notice reply dated 16.04.2015 given by plaintiffs' advocate to defendant	34
6)	Defendant's advocate notice to plaintiffs' advocate dated 29.04.2015	35
7)	Agreement dated 05.01.2001 between plaintiffs and defendant	36
8)	Letter of the Collector of Stamps dated 22.08.2019 for recovery of stamp duty.	36-A
9)	Challan MTR Form Number-6	36-B
10)	Challan MTR Form Number-6	36-C
11)	Dispute Redressal Committed letter dated 26.03.2015 to plaintiff no.1	37

12)	Tax receipt issued by Village Panchayat Kudan of House no.126B	38
13)	Tax receipt issued by Village Panchayat Kudan of House no.126B	39
14)	Verified copy of proceeding book	55
15)	Verified copy of application dated 07.04.2015 issued by plaintiff no.2 to Village Panchayat Kudan	56
16)	Verified copy of proceeding book	57
17)	True copy of Inward Outward register of Village Panchayat Kudan	64
18)	True copy of proceeding book of monthly meeting dated 27.03.2015	65
19)	Certified copy of Exh.1 of R.C.S. No.137/2015	82
20)	Certified copy of written statement filed in R.C.S. No.137/2015	83
21)	Certified copy of issues in R.C.S. No.137/2015	84
22)	Certified copy of evidence affidavit filed by defendant in R.C.S. No.137/2015	85

6] Defendant filed his affidavit in lieu of examination in chief vide Exh.72, however, he failed to appear for cross-examination. Therefore, the evidence of defendant is discarded.

AS TO ISSUE NOS.1 TO 11 :-

7] All these issues are inter-related to each other; hence with an intent to avoid repetition and for the sake of brevity, I answer all of them simultaneously.

8] The plaintiff come with the case that defendant agreed by oral agreement to sale the suit property for consideration of Rs.25,000/- and accordingly, defendant accepted the consideration and puts the plaintiffs in possession of suit property in the year 1999. Thereafter, defendant started claiming additional amount of Rs.5,000/-. Accordingly, written

contract was executed on 05.01.2001 between the plaintiffs and defendant. As per the terms of written contract, defendant agreed to sale the suit property to the plaintiffs for consideration of Rs.30,000/-. The plaintiffs continued in possession of suit property from the year 2001. The plaintiffs in order to prove the contents in plaint, filed the affidavit in lieu of examination in chief of plaintiff no.1 vide Exh.20 and reiterated the contents in the plaint. Plaintiffs in his examination in chief identified his signature and that of his mother as a purchaser on contract dated 05.01.2001. Therefore, the written contract is proved through the evidence of plaintiff no.1.

9] On perusal of the pleadings and evidence of plaintiffs, it reveals that the plaintiffs filed this suit for protection of right to possess as per section 53-A of the Transfer of Property Act and for enforcement of contractual obligation. Therefore, it is prominent to consider the document. The document is proved through the evidence of plaintiffs as discussed above.

10] However, on perusal of written contract at Exh.36, it reveals that the document is unregistered. As per section 17(1A) of Registration Act for taking benefit of section 53-A of the Transfer of Property Act the written contract is required to be registered. The written contract in the present suit is unregistered. Therefore, the advocate for defendant argued that the said document cannot be read in evidence as per section 49 of the Registration Act.

11] As per section 49 of the Registration Act, if the document is required to be compulsory registered as per the provision of section 17 of Registration Act and if the document is unregistered, then the said document cannot be read in evidence. However, the said amendment in

Registration Act by adding the provision of 17(1A) took place on 27.09.2001. The written contract in the present suit is of 05.01.2001. Therefore, the said amended provision of compulsory registration for claiming the benefit of section 53-A of the Transfer of Property Act is not applicable for the written contract in the present suit. The said provision cannot be applied retrospectively. Therefore, it is abundantly clear that the benefit of the provision of section 53A of Transfer of Property Act is available to the plaintiffs. Therefore, it is prominent to consider the legal requirement as per section 53A of the Transfer of Property Act are complied or not?

12] As per section 53-A of the Transfer of Property Act, two conditions are required to be established (1) a written document signed by parties from the terms of which to constitute the transfer can be ascertained with reasonable certainty is required to be established. (2) The transferee has performed or willing to perform his part of contract. If these two conditions are satisfied, then notwithstanding that the instrument of a transfer has not completed in the manner prescribed by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and person claiming under him any right in respect of property of which the transferee has taken or continued in possession other than right expressly provided by the terms of contract.

13] The plaintiffs are in possession of the suit property is an admitted fact. Moreover, the written contract is proved. On perusal of written contract at Exh.36, it reveals that defendant agreed to sale the property for consideration of Rs.30,000/-. Therefore, the intention of the parties to transfer the property is ascertained with reasonable certainty from the terms of contract. The plaintiff come with the case that he made

payment of Rs.30,000/- to the defendant. However, the contents in the document is absent regarding receipt of amount by the defendant.

14] The plaintiff come with the case that the agreed consideration as per oral contract is of Rs.25,000/-. Accordingly, the plaintiff made payment of Rs.25,000/- to the defendant and then the defendant put the plaintiff in possession of suit property in the year 1999. Defendant in his written statement admitted the possession of plaintiff in the suit property from the year 1999. The said conduct of putting the plaintiff in possession and subsequent execution of document at Exh.36 containing the overwriting of consideration from 25,000/- to 30,000/- infers the substance in the plaintiffs' case. The overwriting appears to be signed by the parties agreed to sale. Defendant in his notice admitted that he agreed to sale the property to the plaintiffs for consideration of Rs.30,000/-. Therefore, the substance in the plaintiffs' case is inferred. Therefore, considering the conduct and evidence brought on record, the plaintiff already performed his part of contract is proved. Moreover, the plaintiff filed the tax receipt showing the payment of house tax.

15] Defendant during cross-examination of plaintiff put forth the suggestion regarding permissive possession. The said suggestion is denied by the plaintiff. Moreover, defendant in his written statement admitted the issuance of notice by him to the plaintiffs dated 08.04.2015. Therefore, on perusal of the contents of notice at Exh.33, it reveals that defendant admitted the existence of agreement to sale the property for consideration of Rs.30,000/- Therefore, there is no substance in the defence of permissive possession. Defendant is restrained by principle of estoppel as per section 115 of the Indian Evidence Act from raising the defence of permissive possession. Defendant also put forth the suggestion regarding non-receipt of consideration. However, the said suggestion is denied by the

plaintiff.

16] The plaintiff with the help of section 53-A of the Transfer of Property Act is entitled for protection of his possession arising out of contract. It is well settled that the provision of section 53-A is available only as a shield not as a sword. Therefore, the aspect of specific performance of contract is required to be considered.

17] It is already proved that the written document is of the year 2001, therefore, the question of limitation for specific performance of contract will arise. As per Article 54 of the Limitation Act, the limitation for specific performance of contract is of three years from the date fixed for the performance or if no such date is fixed when the plaintiff has noticed that the performance is refused.

18] On perusal of written contract at Exh.36, it reveals that the time for execution sale deed is not fixed. Therefore, the limitation in the present suit starts from the date when the plaintiff get notice of refusal on the part of defendant. Therefore, the evidence on this aspect is required to be considered.

19] The plaintiff averred that defendant issued notice dated 08.04.2015 demanding the vacant possession of the suit property. The said notice is admitted by the defendant in his written statement. Therefore, the document admitted need not required to be proved. Therefore, the contents in the notice can be read in evidence. On perusal of notice at Exh.33, it reveals that defendant admitted the execution of agreement to sale for the consideration of Rs.30,000/-. However, defendant averred that plaintiff failed to pay the agreed consideration. Therefore, defendant claimed for vacant possession. The contents in notice is sufficient to infer

refusal to specific performance. Therefore, the limitation starts from the notice. The present suit is filed in the year 2015. Therefore, the suit is within limitation.

20] The plaintiffs also in order to prove the refusal on the part of defendant also examined P.W.2 Rupesh Patil vide Exh.50 and P.W.3 Santosh Patil vide Exh.53. P.W.2 and P.W.3 in their examination in chief stated that they called the defendant for resolution of dispute as per the application of plaintiffs. Therefore, the refusal on the part of defendant to execute the sale deed is proved through the evidence of P.W.2 and P.W.3. The act on the part of plaintiff to approach before the Village Panchayat, Dispute Redressal Authority for redressal of dispute and filing of suit soon after getting knowledge of refusal sufficient to infer the readiness and willingness on the part of plaintiffs.

21] The plaintiff continued in possession of suit property and also spent amount on improvement i.e. opening of door and window. The said fact is admitted by the defendant. Considering all these aspects, the specific performance of contract is required to be directed.

22] The advocate for defendant argued that though the suit property is allotted in partition to the defendant. The name of defendant's wife is entered for the suit property as per the Village Panchayat resolution. However, it is well settled that the ownership of property cannot be transferred by the village resolution. Therefore, there is no substance in the contention that the suit is barred by non-joinder of necessary party.

23] The advocate for defendant further argued that plaintiff had not examined the witnesses for proving the receipt of amount and for

proving the contents of written contract. However, the provision of section 68 of the Indian Evidence Act is not applicable for the sale deed. The requirement of examining attesting witness is only for document required to be attested.

24] The advocate for defendant further argued that the relief specific performance is discretionary. However, after the amendment in the year 2018, the specific performance of contract is not a discretionary relief. As per section 10 of Specific Relief Act, the specific performance of contract is mandatory subject to statutory provision of sections 11(2), 14 and 16. In the present suit, the statutory hurdle of section 11(2), section 14 and 16 is not applicable. The readiness and willingness aspect required as per section 16(C) is already discussed above. The plaintiff performed his part of contract is proved by circumstantial evidence i.e. conduct of parties and the contents in document.

25] Therefore, as in the present suit though there is absence of cogent evidence for proving the fact that plaintiff had already performed his part of contract. The performance of contract by plaintiff is inferred from the circumstances and the conduct of parties and the contents in the document. Moreover, the defendant is barred from claiming any other right than created by written contract. Therefore, as per the terms of contract defendant is entitled only for the consideration and not for the vacant possession. Defendant had not claimed the amount is sufficient to infer that he already received the amount. Therefore, he had not claimed it. Therefore, I answer issue nos.1 to 11 in the affirmative and in answer to issue no.12, I proceed to pass the following order.

ORDER

- 1) The suit is hereby decreed with costs.
- 2) Defendant is restrained from interfering with plaintiffs'

peaceful possession in the suit property.

- 3) Defendant is directed to execute the registered sale deed within one month from the date of this order.
- 4) Decree be drawn up accordingly.

(Dictated and pronounced in open court.)

Palghar.
Date : 18.07.2026

(M. M. Mali)
Civil Judge Senior Division,
Palghar.

CERTIFICATE

I hereby certify that the contents of the PDF file are same word to word as per original order:

Name of Steno : Mr. S. B. Rawool, Stenographer, Grade-II.
Court's Name : Civil Judge Senior Division, Palghar.
Date : 18.07.2026
Dictated on : 18.07.2026
Transcribed on : 18.07.2026
Signed by P.O. on : 18.07.2026
Uploaded on : 18.07.2026