MHTH170010722013

Received on	:	12.09.2013		
Registered on	:	12.09.2013		
Decided on	:	27.03.2026		
Duration	**:**	**YY**	**MM**	**DD**
		12	**06**	**15**

IN THE COURT OF THE JOINT CIVIL JUDGE (J. D.), PALGHAR,
(Presided over by Sujata R. Bandal)

REGULAR CIVIL SUIT No. 161 OF 2013 **Exh. No. 156**

1. Salim Sultan Mahmad Ahamad
@ Salamatulla Sultan Ahmed Shaikh
Age – 52 years, Occ.- Agriculturist,
R/o. Bhandarpada, Boisar,
Tal. & Dist. Palghar.

2. Shamkant Shankar Tekavde,
Age – 72 years, Occ.- Nil,
R/o. Mahagaon, Tal. & Dist. Palghar.

… Plaintiffs.

V/s.

1. Rajkumari Surjbali Dubey,
Age – 72 years, Occ. - Nil,
R/o. Mahagaon, Tal. & Dist. Palghar,
Ayakhyapur, Tal. Haidgad,
Dist. Barabanki, State- UP.

2. M/s. S. K. Enterprises
Through Partners

2/1. Sudhir Prabhakar Vichare,
Age – 35 years, Occ.- Business,

2/2. Kripal Gulab Singh,
Age – 40 years, Occ.- Business,
R/o. 243, 2nd Floor, Arihant Market,
Otswal Impair, Boisar,
Tal. & Dist. Palghar.

… Defendant.

Appearances :- Adv. Shri. Geeta Shanke for the plaintiff No. 1.
Adv. Shri. C. J. Raut for the plaintiff No. 2.
Adv. Shri. A. B. Mali and S. H. Gupta for the defendant No. 1.
Suit is ex-parte for defendant No. 2.

J U D G M E N T
(Delivered on 27th March, 2026)
…

This is a suit for specific performance of contract and injunction.

02. Description of suit property :-

Survey No.	Area	Village
215 (New) 358(Old)	1-02-00	Gundale, Dist. Palghar.

Aforementioned property is hereinafter referred as 'suit property'.

Plaintiff's case in short :

03. The Plaintiff No. 1 and 2 has executed agreement to with the defendant and her husband. The parties are agreed to sell on 14 May 2001, the suit property Rs. 1,46,000/-, the plaintiff has paid Rs. 65,000/- to the defendant and agreed to pay remaining amount in February 2002. It is mention on the page No. 4 of agreement that the plaintiff to pay remaining amount till February 2002, otherwise the agreement will be cancel. It is signed by plaintiffs and the witnesses. As per the agreement between plaintiff and defendants the suit property is in possession of the plaintiff till today. The suit property keys of new condition property and permission of collector for alienation. The husband of defendant has executed power of attorney in favour of plaintiff on 31/12/2001 for taking permission for sale. The defendant also executed lease deed for 99 years to the plaintiffs for consideration of Rs.2,50,000/-. The amount of consideration was received by the defendant. The husband of defendant, Surajbali Dube has wrote this in Khate pustika of the suit property in presence of Jayprakash Pathak and Virendra Yadav. The both the plaintiff has right in the suit property. The plaintiff has paid Rs.14,000/- Rs by cheque, Rs.33,000/- by cheque on 14/05/2001. The plaintiff has

totally paid Rs.1,12,000/- to the husband of the defendant No. 1. The permission was necessary for the transfer the suit property. The plaintiff time to time told husband of defendant No. 1 to get permission and execute sale deed, but the defendant No. 1 and her husband avoided therefore the sale deed is not executed till today. On alternative the defendant No. 1 and her husband has executed lease for 99 years for rent of Rs. 2,50,000/-. After that the plaintiff was in economical crises and therefore he executed agreement to sell with defendant No. 2 and 3, but they have no interest in suit property now. The defendant has send notice to plaintiff on 18/3/2013; that time the plaintiff has knowledge about the death of husband of defendant No. 1. After that the plaintiff has sent notice for specific performance to the defendant on 27/06/2013. The defendant has not replied the notice. If the plaintiff has alienate the suit property and create third party interest then the plaintiff will suffer irreparable loss. Hence, the plaintiff has constrain the present suit, for specific performance of contract.

Defence in short :

04 Defendant No. 1 resisted the contents of the suit by filing written statement vide Exh. 61. The contentions in the suit is denied. It is submitted that the suit is not in limitation the plaintiff has not mentioned the boundaries of suit properties. The suit is not within the limitation. The suit land is of new tenure condition land therefore permission of District Collector is necessary. The plaintiff has no right to claim specific performance. The defendant has agrees to sell suit land to the plaintiffs is not true. The defendant has not received amount from the plaintiffs for consideration. The defendant has not executed lease deed and received any rent from the plaintiffs for 99 years. It is denied that the plaintiffs has sent notice for specific performance. There is no cause of action arose to file a suit. Hence, prayed for dismiss the suit.

05. Heard, the argument advanced by the learned advocate for the plaintiffs and defendant.

Issues and Findings:

06. My learned predecessor is issues were framed vide Exh. 75. They are reproduced along with its findings herein under.

Sr. No.	Issues	Findings
1)	Whether suit is within limitation ?	No.
2)	Do plaintiffs prove that defendant No. 1 executed agreement to sale of suit property in their favour on 14.05.2001 and agreed to sell suit property to them for price of Rs. 1,46,000/- ?	Yes.
3)	Do plaintiffs prove that on 14.05.20001 they have paid Rs. 65,000/- to defendant No. 1 as earnest money ?	Yes.
4)	Do plaintiffs prove that they have paid total Rs. 1,12,000/- out of agreed price of suit property to defendant No. 1 and her husband ?	No.
5)	Do plaintiffs prove that they were and are ready and willing to perform their part of contract ?	No.
6)	Whether plaintiffs are entitled to decree for specific performance of contract ?	No.
7)	What order and decree?	Suit is Dismissed.

07. Evidence :

Plaintiff's oral evidence :-

Sr. No.	Name of witness	Relevance	Exh.
1.	Salim Sultan Ahmed	plaintiff	17
2.	Chandrakant Dhodnu Tawade	Witness of deed	124

Plaintiff’s documentary evidence :-

Sr. No.	Name of Document	Exh.
1)	Agreement to sell.	127
2)	Power of Attorney of defendant	144
3)	7/12 extract	26, 27 & 145
4)	Notice dated 18.03.2013	29

5)	Notice dated 30.03.2013	22
6)	Notice dated 27.06.2013	23
7)	Post receipt	24 & 25
8)	Khatepustika	28

Defendant's oral evidence :-

Sr. No.	Name of witness	Relevance	Exh.
1.	Abdul Rashid Bhulan	Power of attorney holder of defendant	139

:: REASONS ::

As to issue No. 01 to 03 :

08. To prove the contention the plaintiffs has field affidavit in chief at Exh. 17. His affidavit in chief is replica of the plaint, hence not reiterated here again. The learned advocate for the defendant has cross-examine the witness at length. In his cross-examination he stated that the suit property is of new tenure condition property and need permission of District Collector for transfer. He and Shashikant Tekwade were agreed to purchase the suit property. They both have examined the documents and revenue record of the suit property. After that they have executed agreement to sell in 2001 with defendant No. 1 and Sujarbali i. e. husband of defendant No. 1. He had completed the agreement. He admitted that there was condition in the agreement to sell that if the remaining amount of consideration not paid up to February, 2002 the agreement will be canceled. He further admitted that he has not personal inquired about the necessary permission from District Collector for sale of property. He has not filed application to Tahasildar or Talathi to enter his name to revenue record of suit property. He admitted that he has not paid tax of the land. He denied that the possession of suit property is with the defendant No. 1. He further admitted that the lease deed dated 28.12.2001 is not registered deed. He denied that the entry in Khatepustika was not drawn in his favor. He denied that the suit property not in his possession. He also denied that the agreement was canceled automatically in February, 2002.

09. The plaintiffs has examined PW-2 Chandrakant Tawade to prove the content of the sale deed. He is witness on sale deed. He deposed in his affidavit in chief that the sale deed executed between the plaintiffs and defendant No. 1 and her husband. The other witness was Bhavani Pathak. The parties has signed the document before him. He proved the sale deed at Exh. 127. The witness is cross examined by learned advocate for defendant, he admitted that his name was not written below his signature. He signed the document at Palghar. He has not saw the suit land and he has no other concern with the agreement. The plaintiffs has called him as witness.

10. The sale deed is on record at Exh. 127. The deed was impounded by the court and then the plaintiffs has complied with the stamp duty. The plaintiffs has proved the sale deed Exh. 127. It is a registered document. According to sale deed plaintiff has paid Rs. 65,000/- to the defendant. The consideration amount is Rs. 1,46,000/-. the possession also handed over to plaintiffs has per the deed. Here, the plaintiffs has proved by oral as well as by documentary evidence that the sale deed was executed between the plaintiffs and defendant No.1 and her husband. However, the plaintiff has not filed any document on record which shows that he has paid consideration amount to the defendant No. 1 except Rs.65,000/- which is mentioned in the sale deed. Hence, I answer issue No. 2 & 3 in affirmative and issue No. 4 in negative.

Issue No. 01 (Limitation):

11. The burden to show the suit is within limitation is on the plaintiffs. The plaintiff has relied upon sale deed and the notice sent by him to defendant No.1. On perusal of documents on record it appears that the sale deed is executed on 28/12/2001, the plaintiffs has admitted the content written on last page of the sale deed that if the remaining amount is not paid till February 2002, the said agreement will be cancelled automatically. The plaintiffs and witnesses has signed below that content. The plaintiffs has not filed on record any document which shows that he has paid remaining amount mentioned in the sale deed to the defendant No. 1 or her husband till February 2002. Admittedly, that the suit property is of new tenure property and permission of District Collector is necessary for transfer the property.

In the suit the permission of District Collector is not yet obtained by the parties. Here, the contract is contingent contract. Here, the time is mentioned and agreed by the parties therefore the time is essence of contract.

12. The learned advocate for the plaintiff relied upon the judgment in ***Panchanan Dhara & ors V. Monmatha Nath Maity; and Ram Karan & ors. Govind Lal & ors***. In these cases, the agreement is essence of contract and there is no other stipulation mentioned in the agreement. Typically, the limitation period for suit for specific performance is three years from the date fixed for performance or refusal. As per Limitation Act Article 54, period of limitation for a suit for specific performance of contract is three years and the time of limitation starts to run from the date fixed for the performance. When the contract specifically mentioned that failure to pay within a certain time results in cancellation, the court considers time to be of the essence, making it difficult to enforce after that period. There is no documentary evidence on record that the plaintiffs has paid remaining amount to the defendant within February 2002, here time is essence of contract as stated. The suit is filed on 13/09/2013 that is after 12 years. Hence, the suit is not within the limitation. Hence, I answer issue No. 1 in negative.

Issue No. 05 and 06:

(Readiness and Willingness for Performance)

13. It is essential in suit for specific performance that to see whether plaintiff is always ready and willing for his part of performance. Thus, it casts onus on the plaintiff to prove that he was and is ready and willing to perform his part of contract. The Specific Relief Act has been amended in the year 2018 and the term aver appearing in Section 16(c) of the Specific Relief Act has been deleted. Thus, now plaintiff need not aver his readiness and willingness to perform his part of the contract and only has to prove it. Section 16 (c) of the Specific Relief Act states that,

Sec. 16 Personal bars to relief:- Specific performance of contract cannot be enforced in favour of a person-

a) .....

b) .....

c) **Who fails to prove that**, he has performed or has always being ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

14. Hon'ble Supreme Court in catena of cases has explained the meaning of readiness and willingness. In case of ***Kalavati Vs. Rakesh Kumar and Ors. (2018) 3 SCC 658*** Hon'ble Supreme Court held that, *"Readiness mean the capacity of plaintiff to perform the contract which would include the financial position to pay the purchase price. As far as the willingness to perform the contract is concerned, conduct of the plaintiff has to be properly scrutinized along with attending circumstances. The factum of readiness and willingness to perform plaintiffs part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances"*. Hon'ble Supreme court referred to judgment of its Court in ***Hanumant Bangar Vs. Navshi Bhagat & Ors. S. Sikandar Vs. K. Subramani (2013) 15 SCC 27***, wherein it is held that, *"The plaintiff is required to prove that from the date of execution of agreement of sell till the date of decree, he was always ready and willing to perform his part of the contract"*.

15. To prove his readiness and willingness for the specific performance, the plaintiffs has filed on record notice at Exh. 23 dated 27/06/2013. The agreement to sell was executed in 14/05/2001, however, it is not on record that what efforts has taken by the plaintiffs to execute the sale deed or to get the permission of the District Collector. The plaintiff stated that when he got notice of the defendant No. 1 dated 18/03/2013 at Exh. 29, then he sent notice for specific performance of the contract and then he get knowledge that husband of defendant No. 1 was died years ago. It appears that the plaintiffs has not taken efforts for specific performance of the contract. After 2018 amendment, specific performance is the rule and refusal is exception. The specific performance enforceable subject to limited grounds under section 14 of Specific Relief Act. Readiness is financial capacity and willingness is

conduct the plaintiff. Continuous readiness and willingness must be prove by the plaintiff.

16. The learned advocate for the defendant relied upon judgment in **Shenbagam & Ors Vs. KK Rathinavel 2022, Livelaw SC 74**; in this it is also observed that there is no communication of the plaintiff with defendant till date on which transaction was completed , showing lack of willingness to perform contract. The plaintiff No. 2 has not entered into witness box to prove his contention therefore adverse inference under section 114(g) of Indian Evidence Act can be drawn. Here, the plaintiff is relied on the judgment in ***Man Kaur by Lrs Vs. Hartar Singha***. The plaintiffs has not filed any document which shows that they have applied for the permission of the Collector for transfer of suit property. In ***Manjunath Anandappa Vs. Tammanasa (2003)10 SCC 390*,** the Hon'ble Apex court held that the plaintiff must prove readiness and willingness, including compliance with statutory requirements, to seek specific performance. The record shows that the plaintiff fails to prove his willingness and readiness, therefore granting the relief of specific performance would be impractical. Hence, I answer Issue No. 5 in negative.

(Relief of specific performance of contract)

17. Plaintiff has not sought for the relief of specific performance of contract with alternative reliefs. As discussed above in readiness and willingness of plaintiff, he has failed to prove the essential elements for the grant of specific performance of contract. While adjudicating the suit for specific performance of contract it is necessary to bear in mind the fundamental principle of law.

18. In the present case there is condition that contract will cancel if the amount is not paid till February 2002. The plaintiffs has filed present suit after 12 years of the agreement to sell. There is no proof of payment. No proof of efforts taken for permission of Collector. The plaintiffs is silent from 2001 to 2013. Therefore, he failed to prove his readiness and willingness. This conduct of the plaintiff dis-entitled him from the relief of specific performance of contract. In this context Judgment of Hon'ble Supreme Court in ***Jagjit Singh Vs. Amarjit Singh***

(2018) 9 SCC 805, assumes importance, wherein it is held that, *"Plaintiff must always plead and prove that he was always ready and willing to perform his part of contract. It must be established that he was ready and willing and has had capacity to perform his part of contract from date of contract up to date of filling of suit. In case of failure of plaintiff to establish readiness and willingness on his part, he is dis-entitled to specific performance of contract"*. In view of reasons discussed above plaintiff is not entitled to the relief of specific performance of contract.

19. As discussed above the plaintiff is not entitled for the specific performance of the contract as he fails to prove that he has not continuous willing and ready to specific performance of contract. The document on record shows that the suit property is in possession of the plaintiff. The plaintiff has not claim for relief of injunction. In the present case the plaintiff has not claim for any alternate relief therefore, it cannot be granted unless claim. Hence, I answer issue No. 6 in negative and in answer to issue No. 7, in the interest of justice I pass following order.

O R D E R

1. The suit is dismissed.
2. Decree be drawn up accordingly.
3. Parties to bear their own costs.

(Dictated and pronounced in open Court.)

Sd/-
(Sujata R. Bandal)
Jt. Civil Judge Jr. Division,
Palghar.

Date :- 27.03.2026
Place : Palghar