



Presented on : 04/05/2013
Registered on: 04/05/2013
Decided on : 16/04/2026
Duration: 12Y/9M/12D

IN THE COURT OF AD-HOC DISTRICT JUDGE-1
KELAPUR, AT-KELAPUR, DISTRICT- YAVATMAL
(Presided over by Manish A. Kothari)

R.C.A.No.30/2013

Ex.42

- 1 Ramanna Godarju Jadhav (dead)
through his legal heirs } Appellants
- 1a Smt. Yashoda Ramanna Jadhav,
age 60 years, occupation nil, r/o.}
Sakhara (khurd), Taluka Kelapur,
Distrit Yavatmal
- 1b Pappu Ramanna Jadhav (dead)
through his legal heirs }
- 1b Smt. Ravina Pappu Jadhav, age }
(1) 27 years, occ: agriculturist
- 1b Ku. Chaitali Pappu Jadhav, age}
(2) 10 years, occupation education
through her legal guardian
mother Smt. Ravina Pappu
Jadhav, r/o Sakhara (Khurd)
Taluka Kelapur, District Yavatmal



1-C Sau. Veena Gulab Rathod, age} 40 years, occupation household, r/o Wagdhara, Taluka Kelapur, District Yavatmal

1-D Sau. Kusum Sadashiv Rathod,} age 35 years, occupation household, r/o Ramnagar (Yewali), Taluka and District Yavatmal

1-E Sau. Sakhu Hirasing Rathod, age} 30 years, occupation household, r/o Ramnagar (Yewali) Taluka and District Yavatmal

1-F Sau. Sumitra Bandu Chavhan,} age 28 years, occupation Household, r/o. Sakhara (Khurd), Taluka Kelapur, District Yavatmal

V/s.

Shri. Dipak Gajanan Kalaskar, age} Respondent
52 years, occupation agriculturist
r/o Pandharkawada, Taluka Kelapur, District Yavatmal



Advocates:-

For Appellant: **SHRI.M.M.CHAUDHARI**

For Respondent: **SHRI. G.P. KHAIRKAR**

APPEAL UNDER SECTION 96 OF THE CODE OF
CIVIL PROCEDURE.

JUDGMENT

(Delivered on 16/04/2026)

Being aggrieved by the judgment dated 22/03/2013 passed by the learned Jt. Civil Judge, Junior Judge, Kelapur (Pandharkawada) in R.C.S. No.68/2008 whereby the suit of the respondent for specific performance and perpetual injunction was partly decreed and the appellant was directed to execute the sale deed in favour of the respondent and being aggrieved by the said judgment and decree, the appellant who is the original defendant filed the present appeal under section 96 of The Code Of Civil Procedure.

2} The appellant is the original defendant whereas the respondent is the original plaintiff



and for the sake of convenience, they will be referred as per their original nomenclature.

3} The facts giving rise to the filing of the appeal is that original defendant Ramanna was the owner of gat No.13/1 admeasuring 2.14 H.R land situated at Niljai, Taluka Kelapur, District Yavamal and out of the said land, the plaintiff entered into agreement to purchase the land by dividing the land east-west and the land situated on the northern side admeasuring 1.21 H.R land which is bounded as under:-

On the east: Field of Kalaskar and
Mansarm

On the west: Field of Kalaskar

On the the : Field of Bhima Madavi
north

On the south: Water channel and remaining
land of the defendant.



(hereinafter the aforesaid property will be called as suit property)

4} The suit land was purchased by Ramanna from Shri. Kondanna by registered sale deed on 25/02/1972. Thereafter defendant entered into an agreement of sale on Gudipadva of 2002 for selling 1.21 H.R land by dividing the land and the land situated on the norther side for a consideration of Rs.30,000/- and at that time the plaintiff Dipak has paid Rs.5,000/- and balance was agreed to be paid at the time of sale deed. Thereafter the said agreement was reduced in writing on 29/08/2002 in which one of the condition was that the defendant will take permission from the competent authority before executing the sale deed. At that time the possession of the said portion situated on the northern side was handed over to the plaintiff. The plaintiff has paid the consideration amount and requested for executing the sale deed for which the plaintiff was always ready and willing.



Therefore, the plaintiff had issued notice on 28/05/2008 and asked the defendant for executing the sale deed, but defendant replied notice on 29/08/2002 and denied the agreement thereby gave cause to the plaintiff for filing the present suit for specific performance of contract for directing the defendant for executing the sale deed and in the alternate for refund of the earnest amount.

5} The defendant appeared and filed his written-statement at Ex.13 in which he admitted his ownership, but denied the execution of the agreement. In the specific pleading the defendant contended that the plaintiff is adjoining field owner and he was in need of Rs.2,000/- and, therefore, the plaintiff asked him for bringing two stamp papers of Rs.10/- each and thereafter Arjanvis had written the contents and he signed over it and at that time he had handed over the original sale deed to the plaintiff. Later on he



refunded Rs.2000/- to the plaintiff in the presence of his wife, but plaintiff failed to return the stamp paper and the original sale deed. The suit property was purchased by him by selling the ancestral property and, therefore, he has no right to execute the sale-deed in respect of the suit property. The defendant never enter into an agreement, but the said transaction was of hand loan. The plaintiff is a money lender and on the pretext of giving loan he got the document executed. At the time of alleged agreement, the rate of land was Rs.1,00,000/- per acre. The plaintiff is not an agriculturist and therefore, the permission under section 89 of The Bombay Tenancy And Agricultural Land is to be taken from the authority before executing sale deed. As the suit of the plaintiff is based on false agreement as no agreement was executed by the defendant and taking advantage of the defendant illiteracy and old age, the false case is filed and prayed for dismissing the suit.



6} On the basis of rival contentions, the Issues were framed at Ex.14. During the trial, the plaintiff examined himself at Ex.16, Ramdas (PW-2) as witness to the agreement at Ex.22 and Ghularam (PW-3) at Ex.31 and thereafter plaintiff closed his side by filing pursis Ex.36.

7} On the other hand, the defendant examined himself as DW-1 at Ex.38 and Yashoda (DW2) his wife at Ex.48 and thereafter closed the side by filing pursis at Ex.41 and Ex.49.

8} Following points arises for my determination against which I have recorded my findings with reasons to follow as under:-

	<u>ISSUES</u>	<u>FINDINGS</u>
1)	Whether plaintiff prove that defendant entered into agreement dated 29/08/2002 for consideration of Rs.30,000/- and Rs.5,000/- was	In the affirmative



	paid to the earnest amount?	
2)	Whether plaintiff was ready and willing to perform his part of agreement?	In the affirmative
3)	Whether plaintiff proves defendant failed to perform his part of agreement?	In the affirmative
4)	Whether plaintiff is entitled for decree for specific performance?	In the affirmative
5)	Whether plaintiff is entitle for mandatory injunction as prayed?	In the affirmative
6)	Whether defendant is entitled compensatory cost as prayed?	In the negative
7)	Whether the judgment and decree passed by the learned trial Court is proper, legal and correct?	In the affirmative
8)	Whether any interference is required in the impugned judgment and decree?	In the negative
9)	What Order?	As per final order



R E A S O N S

Submission of parties:-

9} Heard learned counsel for the appellant Shri. M.M.Chaudhari and Shri. G.P. Khairkar for the respondent. Perused record. The counsel for the appellant Shri. M.M.Chaudhari submitted that the ownership of the appellant over the suit property is not disputed. The alleged agreement was executed on 29/08/2002 whereas the suit is filed in 2008. The suit is filed after the laps of 3 years and therefore, the suit is barred by limitation, but while framing the issues, the issue of limitation is not framed and no finding is recorded thereon. The defendant has taken hand loan of Rs.2,000/- for which the plaintiff had obtained number of stamp papers and signatures and had compelled the original sale deed to be deposited as security. Only Rs.30,000/- was agreed to be paid for the consideration for 3 acres land. Now the consideration is Rs.1,50,000/- per acre which prima faice shows the said transaction



was of money lending/hand loan and not an agreement to sell. As the suit of the plaintiff is barred by limitation and therefore, there is no question of even claiming refund of earnest amount. In case the suit is within limitation and the plaintiff failed to perform his part of contract, in that circumstance only, the plaintiff is entitle for refund of earnest amount. Regarding the issue of readiness and willingness, no notice was issued except the notice issued in the year, 2008. The notice issued in the year, 2008 was issued after the laps of 3 years and only with an intention to bring the suit within limitation. Therefore, the notice issued in the year, 2008 will not given any cause of action to the plaintiff for filing the suit as in both circumstances mentioned in Article 54 of the Limitation Act, the suit is barred by limitation. Therefore, the finding recorded to issue No.2 is not acceptable to the appellant. No steps were taken by the plaintiff for getting the sale deed executed in his favour and therefore, on failure of



plaintiff to comply Section 16(c) of the Specific Relief Act, he is not entitled for the relief of specific performance of contract. During the cross-examination the plaintiff himself admitted that prior to or after execution of the alleged agreement, he never visited the suit field to see the situation thereon. The appellant is in possession of the suit property and it was never parted as mentioned in alleged agreement. Only on the strength of the signature on the stamp papers, the said agreement is brought in to existence. The said agreement is void ab-initio has no rights confirmed upon the plaintiff for filing the suit for specific performance of contract. In fact, the appellant had returned the so called loan amount. The defendant never admitted his signature on the agreement Ex.35. The contents in the agreement are contrary as the defendant/appellant was asked to do the necessary expenses. The notice should have been given within 3 years from the date of alleged



agreement, but no such notice was ever issued till 2008. As even the 2nd part of Article 54 is not applicable and therefore, there was no question for the trial court for exercising the discretion. The plaintiff had miserably failed to prove the case and to show that the suit was within limitation and only on that ground only the suit of the plaintiff is liable to be rejected, but the trial court on wrong assumption has allowed the suit and granted the decree which is liable to be set aside by allowing the appeal.

10} On the other hand, the counsel for the respondent Shri. G.P. Khairkar submitted that, looking to the nature of the suit and the prayer clause which is under the specific performance of contract, the learned trial court had rightly exercise its discretion and had allowed the suit. Unless illegality, perversity is shown the judgment and decree cannot be set aside. The suit land was admeasuring 2.14 H.R land and as there will be



fragmentation and therefore, the permission of the competent authority is required. As per the agreement it was the responsibility of the defendant for obtaining the permission from the competent authority before executing the sale deed. Therefore, it was upon the defendant to show the steps taken for obtaining the permission. Though the defendant has taken the defence of ancestral property, but he was exclusive owner and therefore, had right to entered into an agreement to execute the sale deed. No complaint was ever lodged by the defendant in respect of the false agreement. No counter claim was made to challenge the said agreement. The plaintiff has examined two witnesses to prove the agreement and therefore, as per section 91 and 92 of the Evidence Act, no oral evidence is required to prove the contents of the agreement and the and the contents thereon will prevail. As per Article 54 of the Limitation Act in case the date is mentioned then the limitation will start from the said date



and in case no date is mentioned, then the limitation will start from the date of refusal. Present suit is filed from the date of refusal as the defendant replied his notice giving cause for the plaintiff for filing the present suit. Therefore, the suit is filed within limitation. Though the defendant alleges regarding re-payment of amount but he failed to produce any documentary evidence or the oral evidence to show such re-payment. Thereafter as per direction the balance amount was paid. The plaintiff is an agriculturist and therefore, he is not required to obtain permission from the competent authority. No documents are placed on record by the defendant to show plaintiff engaged in money lending business. Already stamp papers and signature on the agreement are admitted to the defendant. Not only that the original sale deed was handed over by the defendant to the plaintiff. Therefore, plaintiff had proved its case and the learned trial had rightly decreed the suit of the plaintiff and



therefore, there is no need to interfere in the said judgment and prayed for dismissing the appeal.

As to Issues Nos.1 to 6:-

11} It was the contention of the plaintiff that the defendant approached him for selling the suit property and accordingly an agreement was entered and in pursuance of that he paid Rs.5000/- as earnest amount and balance was agreed to be paid at the time of the sale deed after the defendant obtains the permission from the competent authority and after 30 days from the intimation given by the defendant. In order to prove the aforesaid facts the plaintiff examined himself and his two witnesses Ramdas (PW2) and Ghularam (PW3). In the evidence of both the witnesses, the execution of the agreement Ex.35 was proved. Both these witnesses have supported the evidence of the plaintiff Dipak that in their presence defendant Ramanna had executed an agreement which was written by the petition



writer and they had signed on the said agreement. During the cross-examination there are some admissions, but looking to the date of the execution of the agreement and the date on which the witnesses are examined there is long gap and it is natural for the witnesses not to remember all the things that had happened at the time of the agreement.

12} As per the evidence of Deepak (PW1) the agreement was for 3 acres land by dividing the suit land and the portion situated on the northern side was agreed to be sold by the agreement Ex.35. As per the plaintiff, the defendant himself has approached him at Pandharkawada and at that time they first time met. The plaintiff stated that while entering into an agreement not only he was seen 7/12 extract, but he had actually visited the field. When confronted regarding the ownership of the defendant and enquiry with his relative, the plaintiff clarified that when he visited



the field he made enquiry with the adjoining field owner and they told him that the land belongs to the defendant. That means there is no dispute regarding the identification of the suit property and the fact that the defendant is the owner.

13} It is important to see that at the time of execution of agreement Ex.35, it is mentioned in the agreement that the possession was handed over to the plaintiff. Not only that later on the original sale deed of the suit land was handed over to the plaintiff. As far as the agreement is concerned, it is not for the whole land, but it was only for 3 acres land and the remaining two acres land will be with the defendant only. Therefore, in such circumstances, no explanation has come on record from the either side as to why the original sale deed of the suit land was handed over to the plaintiff at the time of the agreement when the said agreement was not for the whole 5 acres land.



14} On the point of possession, the agreement Ex.35 speaks about the same, but the defendant is denying the said fact and claimed to be in possession. In this regard during the cross-examination the plaintiff was confronted in which he admitted that he has no document to show that he is in possession. No extract of 7/12 extract is placed on record to show that after the execution of the agreement, the plaintiff was put in possession of 3 acres land and he started cultivating the same and accordingly, his name was recoded in wahivat column of the 7/12 extract. It is also important to see that the whole suit land is 5 acres land and out of that 3 acres was agreed to be sold. Unless and until there is measurement of the suit land for separating 3 acres from the whole 5 acres land, it is not possible even for the plaintiff to claim possession over 3 acres land without ascertaining the boundaries for 3 and 2 acres land. Therefore, it cannot be said that the possession was actually



handed over to the plaintiff as per the agreement Ex.35. The possession can be set to be symbolic and not physical.

15} The plaintiff contended regarding payment of balance consideration amount by cash or by D.D/Cheque. On the other hand, the defendant is contending the hand loan of Rs.2,000/- and against said hand loan he had executed two stamp papers in respect of the property. The foremost defence of the defendant Ramanna is that he is illiterate and except learning signature in the night school, he cannot read and write. Even during cross-examination, the defendant Ramanna had denied his signature on the written-statement as well as on the agreement Ex.35. Denial of signature on the agreement Ex.35 is quite acceptable, but it is not acceptable that the defendant denying his signature on all the documents on the strength of which he is contesting the suit. It appears that, the defendant



had decided to deny his signature on every document including the written-statement and had taken the defence about his illiteracy.

16} As per plaintiff when the agreement was entered in the year, 2002 at that time the wife of the defendant and his son were present. In this regard Yashoda (DW2) was examined who deposed that Rs.2,000/- was taken from Dipak and against that two blank stamp papers were handed over to him. This evidence is quite contrary to the evidence of Ramanna (DW1) as he admitted executing the document in front of the petition writer in favour of the plaintiff.

17} While executing the agreement Ex.35 only one condition was written regarding obtaining permission from the competent authority before executing the sale deed. As far as this condition is concerned, during the cross-examination Ramanna (DW1) admitted that he had taken the



responsibility of obtaining the permission from the competent authority. As far as the conditions in agreement Ex.35 are concerned, this is the only condition which has to be complied before the execution of the sale deed.

18} As far as the evidence regarding the payment of balance consideration amount in the notice Ex.18, plaintiff had contended that he paid the balance consideration amount by cash and D.D./Cheque. But in order to prove the said contention other than Rs.5,000/- balance consideration of Rs.25,000/- was paid by him, no evidence is adduced on record by the plaintiff.

19} In this case the defendant had taken number of defences challenging the execution of the agreement Ex.35. As far as the first objection regarding the property being the ancestral property as he has purchased the same after selling one of the ancestral property received by



him, no evidence to that effect is adduced on record. The defendant had also stated that the plaintiff is engaged in money lending business. Except pleading, no evidence either oral or documentary is adduced on record to support the said contention that the plaintiff is a money lender and on the garb of giving loan, he used to get the agreements executed on blank stamp papers and later on files suit for grabbing those land.

20} The defendant also came with the theory that the hand loan of Rs.2,000/- taken by him was returned to the plaintiff in the presence of his family. In this regard the evidence of Yashoda (DW2) is silent. Moreover, no date is mentioned in the pleading as well as in the evidence on which he had re-paid the amount of Rs.2,000/- to the plaintiff. After re-payment of the hand loan as alleged, no notice was issued to the plaintiff by asking him to return the blank stamp papers and



the original sale deed of the suit property. As stated he demanded orally, but no notice or complaint has been lodged with the concern police station informing the fraud played by the plaintiff by getting the documents on stamp papers and the original sale deed and now he is not returning the same.

21} On the evidence on record plaintiff examined two material witnesses in whose presence the defendant Ramanna had put his signature and executed agreement Ex.35. The condition the defendant had to comply, no reminders or notices were issued by the plaintiff for obtaining the permission on the competent authority or insisting him for making an application for obtaining the permission.

22} It appears that after the execution of oral agreement in Gudipadwa 2002 and later on, on execution of the agreement Ex.35 both plaintiff



and defendant kept mum. Plaintiff never insisted defendant for taking steps for obtaining the permission. At the same time, defendant never filed any application with any authority seeking permission to sell the land as there is bar of Holding And Consolidation Act.

23} The defendant also contended that when the alleged agreement Ex.35 was executed it was @ of Rs.10,000/- per acre and in fact the rate at that time was much higher then what was shown as agreed in the agreement. In support of this contention the defendant has not adduced any evidence both oral or documentary to show that at the time of the agreement the rate of land per acre was much higher then what was written in the document. No certificate of valuation has been obtained from the Sub Registrar Office showing the valuation of the land per acre at the time of alleged agreement Ex.35.



24} While submitting the argument the counsel for the appellant Shri. Chaudhari submitted that the suit of the plaintiff was barred by limitation and no suit was filed within 3 years from the date of the agreement in compliance of first limb of Article 54 of The Limitation Act. He also submitted that even if there was no time limit mention than it should be reasonable period most probably 3 years from the date of execution of the documents.

25} With reference to the argument submitted, it is necessary to see whether such defence has been taken regarding the limitation while filing the written statement or not. On perusal of the written statement Ex.13 no such defence regarding the limitation was taken that the suit is barred by limitation as the suit is not filed within 3 years from the date of the execution of the agreement or within reasonable period as per 2nd limb of Article 54 of the Limitation Act. Not only



that while adducing the evidence also no such evidence is adduced to show that the suit is not within limitation as prescribed in Article 54 of the Limitation Act. While taking the cross-examination of the plaintiff, no suggestions were given by the defendant that the suit filed by him is barred by limitation. Only in the argument at appellate stage this defence has been taken which has no foundational bare in the pleading or in the evidence before the trial court. As there was no pleading on record and therefore, the learned trial court had not framed the issue of limitation. One of the argument of the appellant is that for want of issue of limitation, the suit was decreed. As far as this submission is concerned, the issues are framed on the basis of the pleading of parties and in case parties failed to plead those fact challenging the limitation, the court suomoto will not frame the issue as the said question was never raised during the trial by taking defence by the defendant.



26} Looking to the background of the said argument the agreement Ex.35 was entered on 29/08/2002 and the suit was filed in August, 2008. That means almost after the laps of 6 years the suit was filed. Before filing the suit the notice Ex.18 dated 18/05/2008 was issued in which the plaintiff asked the defendant for obtaining the permission from the competent authority and for executing the sale deed. This notice was replied by the defendant and the said reply is at Ex.20 in which the defendant denied the execution of the agreement Ex.35 thereby gave cause to the plaintiff for filing the present suit.

27} When the defendant Ramanna refused to execute the sale deed thereby the cause of action for filing the suit for specific performance arose and thereby the case of the plaintiffs comes in the second limb of Article 54 of the Limitation Act as the date on which the defendant refused to perform his part of performance. Therefore, on



this count also the argument of the counsel for the appellant is not acceptable as the suit is within limitation and not barred by the Article 54 of the Limitation Act.

28} Thus, from the evidence on record plaintiff proved the execution of the agreement dated 29/08/2002 and payment of Rs.5,000/- towards earnest money. As the part of the plaintiff will start only when as per the agreement defendant has to obtain permission from the competent authority and after obtaining the same has to intimate within 30 days from the date of getting such permission. Unless and until the permission is obtained, the plaintiff cannot ask defendant for execution of sale deed. Lastly, the notice Ex.18 was issued by the plaintiff and at that time the defendant refused to perform his part of contract and therefore, plaintiff has proved his readiness and willingness for getting the sale deed in his favour and the defendant failed to perform his



part of contract. Therefore, in such circumstances the learned trial court has rightly exercise the discretion in favour of the plaintiff and decreed the suit by directing the defendant to obtain the permission and to execute the sale by accepting the balance consideration amount. Even after execution of the sale deed of 3 acres land, 2 acres land will be available with the defendant Ramanna and now his legal heirs and therefore, it cannot be said that hardship would have been caused to original defendant Ramanna as he was having 2 acres land and not becoming landless and therefore, no hardship will be caused to the original defendant and thereafter his legal heirs. As the defendant failed to prove that the plaintiff is a money lender and on the pretext of giving loan grabbing the land of the people including the defendant and for want to proper and timely action on the part of the defendant, the defendant is not entitled for the compensatory costs as prayed. Therefore, I recorded my finding to point



Nos.1,2,3,4 and 5 in the affirmative and point No.6 in the negative.

As to issue Nos. 7,8 and 9:-

29} As the learned trial court had appreciated the evidence and the documents placed on record by both side and after taking into consideration as decreed the suit of the plaintiff. Therefore, there is no need to interfere finding recorded by the learned trial court as the judgment is proper, legal and correct. Therefore, I record my finding to point No.7 in the affirmative, point No.8 in the negative and in answer to point No.9 I pass the following order:-

ORDER

1. Appeal is **dismissed**.
2. Judgment and decree passed by the learned Joint Civil Judge (Jr.Dn.), Kelapur (Pandharkawada) in R. C. S. No. 68/2008 2008, dated 22/03/2013 stands maintained and confirmed.
3. Parties to bear their own costs.



4. Decree be drawn up accordingly.
5. R. & P. of the suit be sent to learned Jt. Civil Judge (Jr.Dn.), Kelapur (Pandharkawada)

DATE: 16.04.2026
KELAPUR

(M.A.Kothari)
Ad-hoc District Judge-1,
Kelapur