



Presented on: 22.01.2018
Registered on: 22.01.2018
Decided on: 07.03.2025
Duration: Y. M. D.
07 01 15

IN THE COURT OF DISTRICT JUDGE – 14, AT PUNE.
(Presided over by B.D.Kulkarni)

REG. CIVIL APPEAL No.69/2018
CNR No. MHPU010011182018
EXH. No.

APPELLANTS

1] Satishchandra Bhajanlal Dube
Age: 57 yrs, Occu : Agri.

2] Nilam Satihchandra Dube
Age:50yrs, Occu.: Agri.
All R/at: S. No 49 Dube Nagar,
Wadgaon Sheri, Pune.

... VERSUS ...

RESPONDENTS

1] Shri. Kaluram Eknath Galande
Age: 67 yrs, Occu :Agri

2] Barikrao Eknath Galande
Age: 61 yrs, Occu. Agri
R/at: Ramwadi Nagar Road
Tal Haveli Dist Pune

3] Goel Brothers
A partnership firm having registered
office Saan Mahu Complex, 5 Bund
Garden road, Pune
Through its partnership

3a] Shri. Rajendra Sitaram Goel
Age:Adult, Occu. Business

3b] Shri. Shubhash Sitaram Goel

Age: Adult, Occu. Business

R/at: Saan Mahu Complex, 5 Bund
Garden road, Pune

4] Rajendra Sitaram Goel

Age: 51 yrs, Occu : Service

5] Vijay Kaluram Galande

Age: 49 yrs, Occu: Service

6] Dattatray Kaluram Galande

Age: 42 yrs, Occu: Service

7] Sanjay Kaluram Galande

Age: 36 yrs, Occu : Service

8] Shantilal Barikrao Galande

Age: 34 yrs, Occu : Service

9] Nitin Barikrao Galande

Age: 34 yrs, Occu: Service

4 to 9 R/at: Survey NO 29

Ramwadi pune Nagar Road

Pune.

APPEARANCE:-

Shri. R.M. Daundkar

Advocate for the Appellant.

Shri. S. P. Newase

Advocate for the Respondent No. 1 & 2

Shri. C. D. Dharane

Advocate for the Respondent No.3

Shri. A. S. Devkhile

Adv. for the Resp. No. 4,5,6,7,8 and 9

**An appeal under Section 96 &
under Order 41 of the Code of
Civil Procedure.**

J U D G M E N T
(Pronounced in open court on 07th March 2025.)

This appeal is directed against the judgment and decree order dated 16/12/2016 passed by the Ld. Hon'ble Civil Judge Senior Division in Special Civil Suit No.2003/1997, whereby the court has partly allowed by directing the refund of the earnest amount in a suit for specific performance of a contract.

02. For the sake of convenience, the parties to this appeal are from now on referred to in their original status before the Ld. trial court as plaintiff and defendant.

03. The Ld trial court framed issues eventually. The trial court has recorded its findings.

04. After evaluating the evidence and documents standard in the proceeding, the Ld., the trial court, has partly allowed the suit by way of refusing specific performance and directing a refund of the earnest amount. According to the appellant/plaintiffs, the Ld trial court has not considered the legal position or appreciated the evidence on record. On the contrary, the trial court has overlooked the evidence laid by the parties. Therefore, the judgment of the Ld trial court is incorrect. Being aggrieved by the decision and dissatisfied with the impugned decree, the appellant/plaintiffs have preferred this appeal.

05. The judgment of the trial court shows that the parties have adduced the following evidence. The evidence of the plaintiffs PW No. 1 Satishchandra filed an affidavit at Exh. No. 60 and adduced the following documents: 7/12 extract Exh. 71, Sathekhat Exh. 72, Supplementary deed Exh. 73, receipt Exh. 74, public notice Exh. 75, Index II Exh. 76, notice Exh. 77, notice dt 20/6/2005 Exh. 78, acknowledgment receipt Exh. 79, notice dt 24/06/2005 Exh. 80. The defendants filed evidence affidavits of DW No. 1 Kaluram Galande at Exh. 93, DW No. 2 Vijay Galande at Exh. 105, DW No. 3 Shantilal Galande at Exh. 108, DW No. 4 Rajendra Mangiram Agarwal at Exh. 115. Defendants adduced evidence 7/12 Extract at Exh. 81 to 84 and filed evidence close pursis at Exh. 112.

06. Heard Advocate Shri. R. M. Daundkar for the appellant and Advocate Shri. C. D. Dharane for the Respondent No. 3, Shri. A. S. Devkhile, Advocate for the Respondent No. 4, 5, 6, 7, 8, and 9 for the respondents. I have perused the impugned judgment, evidence, and material on record.

07. Given the points, the facts, evidence, and other material on record, the following points arise for my determination. My findings thereon are mentioned as against them for the reasons discussed hereinafter.

SR.NO.	POINTS	FINDINGS
1.	Whether the respondents/owners have agreed to sell the property in dispute to the appellants for consideration of Rs	

13,30,000/- and they have executed the agreement to Sell on 30.11.1994 by accepting an earnest amount of Rs. 1,25,000/- and thereafter Rs. 2,00,000/-?

Partly, yes.

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|----|---|------------------------|
| 2. | Whether appellants were/are ready and willing to perform their part of the contract? | No |
| 3. | Are appellants entitled to relief of specific performance of a contract as prayed? | No |
| 4. | Are appellants entitled to compensation and a refund of the earnest amount as prayed? | Partly yes |
| 5. | Is respondent No. 3 is bonafide purchaser for value without notice of the dispute? | Does not survive |
| 6. | Is any interference in the judgment and decree of the trial court warranted? | No |
| 7. | What order? | As per the final order |

REASONS

POINT No. 1 to 5

08. So far as these points are concerned, we have to see the pleading of parties and bring in brief the controversy between them. The plaintiffs have come up with the case that the suit property is an ancestor property of defendants No. 1 and 2, and it is a wasteland having no income therefrom. Defendants No. 1 and 2 met with the plaintiffs with a story of their legal necessity and showed their intention to sell the suit property. At that time the plaintiffs showed

their willingness to purchase the property. At that time, the terms of the agreement settled between them, and the plaintiffs agreed to purchase the property for consideration of Rs. 13,30,000/-, and on 30/11/1994, they entered into an agreement with a payment of an earnest amount of Rs. 1,25,000/- to the defendant No. 1 and 2. At that time they agreed to make payment of the remaining amount at the time of the sale deed. Thereafter, on 22/5/1995, they entered into a supplementary agreement, and plaintiffs paid to defendants the amount of Rs. 50,000/- and Rs. 1,50,000/- by way of cheques. Accordingly, the plaintiffs have paid defendants No. 1 and 2 the total amount of Rs. 3,25,000/- as part of such agreement. The plaintiffs were and are ready and willing to perform their part of the contract. Defendants No. 1 and 2 are not ready to cooperate with the plaintiffs and are not ready to perform their part of the contract. Thus, this suit. In the pending of this suit, defendants No. 1, 2, and 4 to 9 have executed the development agreement of the suit property in favor of defendant No. 3. The transaction between defendants No. 1, 2, 4 to 9, and defendant No. 3 is void ab initio, and it is not binding on the plaintiffs.

09. Defendants No. 1 and 2 have come up with a case that on 8/8/1985, they had executed the agreement to sell the suit property in favor of Paraskumar Sankalecha. The said transaction was not completed, and because of that, he had instituted a suit, Spl. C.S. NO. 1785/1995, for specific performance of the contract, and there was an interim order against them restrained from creating the interest of suit property. One estate agent of Wadgoan Sheri, namely Jayantilal Shah,

introduced the plaintiffs to them, and at that time the plaintiffs gave assurance that they would settle that dispute between Sankalecha and them at their own risk, subject to the condition that they have to sell their property to them at cheaper costs. In these factors, the defendants had executed the agreement in question. The defendants have received the amount of Rs 3,25,000/- from the plaintiffs. The plaintiffs had knowledge about the suit instituted by Sankalecha. Due to compulsion, the defendants agreed to sell the property. The plaintiffs have not taken any effective steps either to compromise the suit instituted by Sankalecha or to take steps to show their readiness and willingness to perform their part of the contract. To complete the transaction in respect of the suit property, the permission of a special authority is required. The plaintiffs have not taken any steps to fulfill their part and agreement for getting such permission. Therefore, the suit is not tenable.

10. Defendant No. 3 has raised the plea that there was an interim order in a suit Spl. C.S. No. 1785/1995 restraining the present defendants No. 1 and 2 from creating an interest in a third party person, and because of that, the agreement in dispute is not enforceable as it was executed when the order of injunction was in force. The property is ancestral, and defendants No. 4 to 9 have a share in the suit property. Defendants No. 1 and 2 had executed an agreement without the consent of defendants No. 4 to 9. Therefore, the agreement is not enforceable. The defendants executed the registered indemnity bond and a power of attorney on 19/1/2005, and defendant No. 3 got possession of the property. The plaintiff in a suit

Spl.C.S.No. 1785/1995 joined subsequently with them. They have developed the property by spending a huge amount of Rs. 25,00,000/-. Therefore, they are bona fide purchasers.

11. In the background of the aforesaid pleading of both sides, there is no dispute on the point that defendants No. 1 and 2 agreed to sell the property for consideration of Rs. 13,30,000/- and executed the agreement dt 30/11/1994 in favor of the plaintiffs, and out of agreed consideration they received a total amount of Rs. 3,25,000/- from the plaintiffs.

12. According to the plaintiffs, the agreement in dispute is enforceable, and they were and are ready and willing to perform their part of such agreement dated 30/11/1994. Per contra, the defendants have raised a plea that the agreement was executed due to compulsion, though they received the amount of Rs. 3,25,000/- from the plaintiffs. Secondly, they have raised the plea that the plaintiffs have not taken any steps to fulfill their part of the contract and they were/are not ready and willing to perform their part of the contract. At the time of the agreement in dispute, there was an order of injunction restraining the present defendants No. 1 and 2, and because of that, the agreement in dispute is void ab initio.

13. Now the question before me is whether the agreement in dispute was with the free consent of defendants No. 1 and 2 on the face of their defense that due to the suit instituted by Sankalecha against them, they entered into such an agreement on the promise of

the plaintiffs to settle it. Now we have to scrutinize the evidence on record to that effect. The plaintiffs have examined PW 1 Satishchandra at Exh. 60, and he has reiterated the facts in the plaint regarding the execution of the agreement in dispute and payment of earnest money to defendants No. 1 and 2. He has deposed that there were conditions imposed on defendants No. 1 and 2 to get the required permission and complete the agreement, but they failed to comply with the same. The plaintiffs were/are ready to perform their part of the contract. They have deposited in the court the remaining amount of consideration and shown their readiness and willingness to perform their part of the contract. During his cross-examination, he has shown ignorance regarding clause C on pages 5 and 2 of the agreement to sell in dispute. He has admitted that he has not made an inquiry about the property, which is situated in which zone, whether non-agricultural or agricultural. He has admitted that defendants No. 1, 2, and 4 to 9 are owners of the suit property. The PW No. 1 Satishchandra Dube has denied the suggestion that defendants No. 1 and 2 executed the agreement in favor of Paraskumar Sanklecha on 03/11/1985, and Sanklecha instituted a suit Spl. C.S No 1785/1995 for specific performance of contract based on the agreement dt. 03/11/1985, and the same was pending.

14. The defendants have examined DW 1 Kaluram, and he has reiterated the facts in his written statement and deposed that to end the suit Spl. C.S. No. 1785/1995 instituted by Sanklecha against them for a suit for the specific performance of a contract based on an agreement to sell dated 03/11/1985 in his favor, and the same was

pending, on the promise of plaintiffs to settle it they entered into this new contract in dispute. On the promise of plaintiffs to settle the said dispute with Sankalecha subject to selling the property to them at the cheapest rate, they executed the agreement in dispute. DW 2 Vijay, who is the son of defendant No. 1, has supported DW 1 Kaluram. DW 3 Shantilal Galande is the son of defendant No. 2 Barikrao and has supported the testimony of DW 1 Kaluram. The plaintiffs have cross-examined them. During their cross-examination, it was brought on record that 15R land out of the total property of said Gat Number was acquired by the government. During their cross-examination, the plaintiffs put their finger on the terms and conditions mentioned in the agreement to sell at Exh. 71.

15. Advocate Shri. Daundkar, for the appellant,, argued that there is no dispute regarding the execution of the agreement at Exh. 72 r/w supplementary agreement at Exh. 73. The plaintiffs published the public notice in the newspaper. The defendants have not examined Shri. Shah to prove that he was introduced to the defendants with the plaintiffs, and the plaintiffs agreed to act as mediators to settle the dispute between Sankalech and defendants No. 1 and 2. The development in the testimony of DW1 Kaluram at Exh. 93 is without pleading. Therefore, his developed testimony could not be accepted as evidence. The defendants have not adduced evidence to show the correspondence between plaintiffs and defendants. The testimony of DW 2 Vijay at Exh. 105 and DW 3 Shantilal Galande at Exh. 108 are without pleading. Once the agreement is canceled and entered with another new agreement, the party has no right to renew the canceled

agreement. The plea of defendant No. 3 regarding joining Sankalecha with them is a renewal of the agreement. The trial court has not considered all these aspects with a legal approach and held that the plaintiffs are not laymen and they have knowledge about the required permissions, etc. The plaintiffs have deposited the remaining amount of consideration and shown their readiness and willingness to perform their part of the contract. The trial court has dismissed the claim of specific performance on the ground that the plaintiffs were/are not ready and willing to perform their part of the contract. When the defendants have admitted to an agreement and payment of the earnest amount and the plaintiffs have deposited the remaining amount of consideration, there is nothing on the part of the plaintiffs to fulfill anything and to show their readiness and willingness to perform their part of the contract. Therefore, the judgment and decree of the trial court are not commensurate with the evidence on record. Therefore, it is necessary to interfere in the judgment and decree of the trial court by way of setting aside and decreeing the suit for specific performance of the contract. He relied upon the following case laws.

- 1] **Motilal Vs. Ramdasi Devi, AIR 2000 SC 2408**
- 2] **Prakash Vs. Angadlal, AIR 1979 SC 1241**
- 3] **Azhar Vs. Rajamani, AIR 2009 SC 2157**
- 4] **Nitin Vs Gandhi AIR 2014 (6) BOM R 558**
- 5] **Srinivas Vs V. Kumar, AIR 2024 0 (SC) 1310**
- 6] **Gopal Vs. Mohamed, AIR 1968 SC 1413**
- 7] **K Prakash Vs. Sampath, AIR 2015 SC 9**
- 8] **Laxman Vs. Taramati, 2010 DGLS (SC) 454**
- 9] **Shripati Vs. Rajaram, 2012 (6) ALL MR 847**

10] Syed Vs. T.R. Gopalkrishna, AIR 1990 0 SC 3029.

16. The advocate, Shri. Neware, for the respondents No. 1, 2, 4 to 9, and Advocate Shri. Dharne, for respondent No. 3, argued that though they have admitted the agreement in question, it was not with free consent. The plaintiffs have not taken any steps to show their readiness and willingness to perform their part of the contract. The plaintiffs had knowledge about the suit between the present defendants and Sanklecha. Though the promise of the plaintiffs to settle the dispute between Sankalecha and defendants No. 1 and 2 is not mentioned in the agreement in dispute, the plaintiffs had knowledge about the same. The defendants required the amount to fight the suit instituted by Sankalecha, and they had explained it to the plaintiffs. The agreement in dispute is frustrated as the owners, defendants No. 4 to 9, have executed the registered agreement in favor of defendant No. 3 besides defendants No. 1 and 2. This fact makes clear that there was no consent of defendants No. 4 to 9 to the agreement in dispute. Afterthought, the plaintiffs have deposited the amount on knowing the agreement between defendants No. 1, 2, 4 to 9, and defendant No. 3 to show his readiness and willingness. Therefore, they are not entitled to specific performance. The trial court has rightly appreciated the evidence and reached the correct conclusion. Further argued that the plaintiffs have executed a registered agreement in favor of this defendant, and now they have developed it by spending a huge amount. The contract between plaintiffs and defendants No. 1 and 2 was a contingent contract based on the fulfillment of the promise, but the plaintiffs have not fulfilled

their promise to settle the suit. Therefore, the contract has already been frustrated. The judgment and decree of the trial court are correct. There is no need to interfere in the judgment and decree of the trial court. They relied on case laws.

- 1] **Banarasi vs. Ram Phal**, 2003 DGLS (SC) 190
- 2] **Jugraj Singh Vs. Labh Singh**, AIR 1995 Supreme Court 945
- 3] **Inderchand Vs. Motilal**, 2009 DGLS (SC) 1067
- 4] **Rahat Vs. Hafiz**, AIR 1983 Allahabad 343
- 5] **Kadupugotla Vs. Vudagiri** 2021 DGLS (SC) 859
- 6] **K.S. Vidyanandam Vs. Vairavan**, 1997 DGLS (SC) 217
- 7] **Rajesh Kumar Vs. Anand Kumar**, DGLS (SC) 538

17. Before going to reach a certain opinion, we have to see the mandate laid down in the aforesaid case laws. In the case of **Motilal vs. Ramdasi Devi (Supra)**, it has been laid down that readiness and willingness could not be treated as a straitjacket formula and that it had to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned. In the case of **Prakash vs. Angadlal (Supra)**, it has been held that the relief of specific performance ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief. In the case of **Azhar vs. Rajamani (Supra)**, it has been held that it was not necessary that the entire amount of consideration should be kept ready, and the plaintiff must file a plea in respect of readiness and willingness. In the case of **Srinivas vs. V. Kumar (Supra)**, it has been held that no evidence could be laid beyond pleadings, and the plea by way of replication could not be entertained when it was rejected at the initial stage when an amendment to that effect was sought. In the case of **Gopal vs. Mohamed (supra)**, it has been held that the party in possession of the

best evidence would throw the light on the issue in controversy. In the case of **K. Prakash vs. Sampath (Supra)**, it has been held that when the trial court exercises its discretion in one way or another after appreciation of the entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily, or against judicial principles. In the case of **Laxman vs. Taramati (Supra)**, it has been held that the party may be able to support the decree but cannot challenge the findings without filing the cross objections. In the case of **Shripati vs. Rajaram (Supra)**, it has been held that the burden lies on the defendant to prove that the document executed was intended for something else than what is mentioned in the documents. In the case of **Syed vs. T.R. Gopalkrishna (Supra)**, it has been held that compliance with readiness and willingness has to be in spirit and not in letter and form, and the averment in the plaint that a major portion of the amount has already been paid and the balance sale consideration has been deposited on the date of filing suit, such a plea amounts to readiness and willingness.

18. In the case of **Banarasi vs. Ram Phal (Supra)**, it has been held that a party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross-objection, though certain findings may be against him. In the case of **Jugraj Singh vs. Labh Singh (Supra)**, it has been held that the continuous readiness and willingness at all stages from the date of the agreement till the date of hearing of the suit need to be proved. The substance of the matter and surrounding circumstances and the conduct of the plaintiff must be

taken into consideration in adjudging readiness and willingness to perform the plaintiff's part of the performance. In the case of **Inderchand vs. Motilal (Supra)**, it has been held that, for granting the decree of specific performance, the court must arrive at the conclusion that the plaintiff not only pleaded but also established his readiness and willingness to perform his part of the contract. In the case of **Rahat vs. Hafiz (Supra)**, it has been held that the readiness and willingness to perform his part of the contract is to be judged on the true construction of the agreement. In the case of **Kadupugotla vs. Vudagiri (supra)**, it has been held that it was open to the subsequent purchaser to raise any submission on the issue of readiness and willingness. In the case of **Rajesh Kumar vs. Anand Kumar (Supra)**, it has been held that if a suit is instituted after a long delay, the plaintiff is not entitled to specific performance. In the case of **K.S. Vidyanandam vs. Vairavan (Supra)**, it has been held as follows:

In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2-1/2 years in clear violation of the terms of the agreement, which required him to pay the balance, purchase the stamp papers, and then ask for the execution of the sale deed within six months. Further, the delay is coupled with a substantial rise in prices, according to the defendants, three times—between the date of the agreement and the date of the suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.

19. On careful reading of the aforesaid case laws, we can summarize it and resolve the mandate therein, as to the readiness and willingness are essential elements that ensure the smooth execution of

a contract; they reflect parties' capacity and intention to fulfill their obligations, which are critical for the validity of the contract and its enforceability. Without these elements, the contract may fail to achieve its intended purpose, leading to disputes and legal challenges. It is a settled position of law that without pleading, the parties have no right to lead evidence on the facts. The parties have the right to put their views before the court based on law points even if they have not submitted their pleadings.

20. The evidence laid by the parties shows that it is clear that the defendants No. 1 and 2 entered into an agreement to sell with one Sankalecha in respect of the suit property on 8/8/1985, and Sankalecha instituted a suit (Spl.C.S. No. 1785/1995) for specific performance of the contract, and it was pending on the date of the agreement in question. The plaintiffs have pleaded that defendants No. 1 and 2 came to them with a plea that they need an amount for the legal necessity of the family, and they are willing to sell their property. The plaintiffs have denied that they knew about the suit instituted by Sankalecha against defendants No. 1 and 2 vide Spl. C.S. No. 1785/1995. According to defendants No. 1 and 2, the plaintiffs agreed to settle the suit between the defendants and Sankalecha subject to the condition of selling the property to them at the cheapest rate. Before considering these aspects, we have to go through the agreement in dispute.

21. The agreement dt 30/11/1994 is at Exh. 72, and the supplementary agreement dt 22/5/1995 is at Exh. 73. The recitals in the

supplementary agreement at Exh. 73 show that it is not an independent agreement, but it is part and parcel of the agreement dated 30/11/1994 at Exh. 72 and the terms and conditions therein. There is no dispute on the point that on the date of agreement, dt 30/11/1994, the defendants No. 1 and 2 received an amount of Rs. 1,25,000/-. Moreover, there is no dispute the defendants again received an amount of Rs. 2,00,000/- on the date of the supplementary agreement dt 22/5/1995 at Exh. 73. On perusal of recitals in the agreement of sale at Exh. 72, there was a main condition that the plaintiffs agreed to pay the remaining amount of Rs. 12,05,000/- on the date of the sale deed, the property will have to sell for plotting purposes, and the liability of all the compliance, including measurement and search of title, to obtain required permissions were imposed on the plaintiffs. During the subsequent agreement, the plaintiffs paid Rs. 2 lakhs amount to defendants No. 1 and 2 and reverted back the liability of some compliance to defendants No. 1 and 2.

22. According to the plaintiffs, the defendants were in dire need of the amount. At the first agreement, the plaintiffs accepted the liability to get all the permissions, and at the time of the supplementary agreement, the liability for some of the compliances was imposed on defendants No. 1 and 2. Here, the conduct of the plaintiffs is coming into doubt whether, under their allurements of payment of amount, the defendants No. 1 and 2 executed the supplementary agreement. Because the payment of Rs. 2,00,000/- was made to defendants No. 1 and 2 on the date of the supplementary

agreement. It is worth noting that there is a specific condition in the agreement at Exh. 73 that the intended transaction of the sale should be completed within 6 months from the date of agreement at Exh. 72. Such an agreement was executed on 30/11/1994. According to such an agreement, the intended sale transaction should have been completed on or before 29/05/1994. The supplementary agreement was executed on 22/05/1995, within 6 months from the date of the main agreement at Exh. 72. In the supplementary agreement, there is no specific clause about the extension of the time to complete the intended transaction of sale. There is indeed a clause that the intended transaction would be completed by assigning the property to a residential zone. This clause is vague. The plaintiffs entered into an agreement on 30/11/1994, and at that time they had knowledge about the status of the land. In such circumstances, and to justify their plea including such a clause in the agreement, they have to show what efforts they had taken to bring such property into a residential zone, in the consequences of the permission, and they failed to get such permission due to certain compliance, difficulty comes in their way to fulfill such conditions and because of that such clause enshrined in the supplementary agreement. The failure of plaintiffs to show this fact, the inference of obtaining the agreement at Exh. 73 under the compulsion pleaded by the defendants and allurement of amount the defendants No. 1 and 2, executed the agreement, this fact is showing probability therein. The plaintiffs have not made any efforts since the date of agreement at Exh 72 to the institution of the suit. The plaintiffs will have to prove their continued readiness and willingness at all stages from the date of the agreement till the date of the hearing of the suit that needs to be

proved as laid down in the case of **Jugraj Singh Vs. Labh Singh (Supra)**. While scrutinizing the evidence regarding the readiness and willingness, the substance of the matter surrounding circumstances, and the conduct of the plaintiff must be taken into consideration as laid down in the above-mentioned Jugraj case. Therefore, the aforesaid surrounding circumstances and substances of the matter and conduct of the plaintiff are enumerated here.

23. The plaintiffs have come up with the case that they have deposited the remaining amount of consideration. It is worth noting that defendants No. 1, 2, and 4 to 9 executed the independent registered agreement in favor of defendant No. 3, and after knowledge of such a fact, the plaintiffs have applied for impleading defendant No. 3 to 9, and thereafter they have deposited the amount of remaining consideration. The deposit of the amount itself is not the sole criterion to infer readiness and willingness. The intention of the plaintiffs is to carry the weight. The plaintiffs have to prove their efforts to comply with their part of the contract since the date of the agreement. When the plaintiffs have deposited the remaining amount of consideration after the transaction between defendants inter-se and on their impleadment, they have taken such steps afterthought. Therefore, the steps taken by the parties to the suit are an afterthought, such steps have no evidential value. It is worth noting that the suit was instituted on 29/11/1997, and the remaining amount of consideration was deposited on 9/1/2009, i.e., after a decade. If the plaintiffs wish to show their readiness and willingness with conduct of depositing a remaining amount of consideration, they will have to

deposit it on the date of institution of the suit or before the transaction between defendants 3 to 9, though the depositing amount is not mandatory. Why have they taken such steps afterthought? This conduct of the plaintiffs suggests that either they had no amount to complete the transaction or they took the agreement casually by considering the compulsion of defendants No. 1 and 2 in the face of their economic needs. Therefore, their approach shows that the plaintiffs were not ready and willing to perform their part of the contract, and due to their casual approach, defendants No. 1 and 2 have not gotten the maximum amount of agreed consideration in the period of raising the price of the property. The plaintiffs have not raised any plea regarding the enhancement of the price of the land where it would be inequitable to give the relief of specific performance to the plaintiffs.

24. The plea of plaintiffs that they had no knowledge about Spl. C.S. No. 1785/1995 instituted by Sanklecha against defendants No. 1 and 2 is not accepting the mind. The person who is entering into the transaction of the immovable property by making a payment in consideration thereof in lakhs cannot complete it blindly and he has to take the information regarding not only the property but also the dispute regarding such property. Admittedly, the plaintiffs are in the property business. Therefore, their plea as to why they did not know about the suit instituted by Sanklecha is not acceptable. When the plaintiffs are not ready to explain the purpose of the amount required to defendants No. 1 and 2, what is the difficulty in accepting the testimony of DW 1 Kaluram, who deposed on oath that he needed the

amount for fighting the suit instituted by Sanklecha, and for the said purpose he obtained the amount from the plaintiffs and the plaintiffs agreed to settle the dispute? Naturally, if there was a barrier because of other transactions, the builders and those involved in the real estate industry used to be in charge of clearing the property that they intended to buy. Therefore, the likelihood of completing the transaction in question is strengthened by DW 1 Kaluram's oath-based testimony and the natural course. Consequently, the disputed agreement is now under question as to whether or not it was made with free consent. The party who had the title to it, or the aggrieved party, always benefited from the doubt. Furthermore, these facts demonstrate that because of an ongoing dispute between defendants No. 1, 2 and Sankalecha, the plaintiffs took the current contract lightly and failed to follow its terms. When he realized that the defendants needed the money and enforced it, he reversed the terms through a supplemental agreement.

25. Due to the family's legal need, the plaintiffs themselves have made the case and argument that defendants No. 1 and 2 agreed to sell the property and signed the applicable sale agreement. In these situations, the plaintiffs have the burden of demonstrating the family's legal necessity. Examining the ages of defendants No. 4 through No. 9 shows that they were adults at the time of the agreement at Exh. 72 r/w 73. Since the defendants have been co-owners of the suit property since birth, the plaintiffs will need to demonstrate that they were aware of the disputed agreement. In an independent agreement with defendant No. 3, defendants No. 1 and 2 acknowledged their presence

to complete the transaction with defendant No. 4 to 9, along with other defendants. In claiming that they were unaware of the conflict between Sankalecha and defendants No. 1 and 2, how can the plaintiffs claim that defendants No. 4 to 9 were aware of their transaction? It is necessary to weigh equally the plaintiffs' knowledge of the ongoing lawsuit filed by Sanklecha and the defendants Nos. 4 to 9's knowledge of the agreement between the plaintiffs and defendants Nos. 1 and 2. These facts imply that either neither party is aware of the facts, or both parties are attempting to conceal the facts about their respective knowledge of the facts. It is not appropriate for either party to suddenly change their stance. The case of the plaintiffs is being decided by us. Thus, before blaming the defendants, the plaintiffs must demonstrate their innocence and demonstrate a good intention. The plaintiffs are not entitled to shelter because of the other side's weakness. The undivided share of defendants No. 4 to 9 in the suit property and the legal necessity are both concerning; pleading is not required for these legal points. Conclusions can be made based only on the parties' intent, actions, and mannerisms. The conduct of defendants No. 4 to 9 in this case is compelling to consider the legal enforceability of the agreement between the plaintiffs and defendants Nos. 1 and 2, as they executed the agreement in favor of defendants No. 3. The agreement in question is frustrated for lack of evidence regarding the legal necessity of the family and the ownership of defendants No. 4 to 9 over the undivided share in the suit property when there is no proof that they have benefited from the agreement in dispute or that they have independently decided to execute the agreement in favor of defendant No. 3, as evidenced by the registered

agreement they have executed to that effect.

26. The DW 1 Rajendra for defendant No. 3 has deposed about all the facts including the pending of Spl.C.S No. 1785/1995, the assurance of plaintiffs to the defendants No. 1 and 2 for settling the dispute with Sanklecha subject to sell them the property, the share of the defendant No. 1, 2, 4 to 9 and the absence of consent of defendants No. 4 to 9 to the agreement to sell in question. The plaintiffs have not cross examined him. Whatever his cross examination at the hands of plaintiffs is explanatve nature. They have brought on record the partners of defendant No. 3 were not present that at the time of agreement in question and agreement with Sanklecha. His knowledge about those facts is based on the written statement filed by defendant No. 1 and 2. The contention of the defendant No. 3 is regarding readiness and willingness of the plaintiffs to perform their part of contract. The defendant No. 3 has right to plead and prove about the readiness and willingness of the plaintiffs as laid down in the case of **Kadupugotla vs. Vudagiri (supra)**. While entering into development agreement the defendant No. 3 has made inquiry with the defendants regarding previous transactions. Therefore, they have right to challenge it with intent to uphold their contract. We have already negated the plea of plaintiffs regarding their readiness and willingness.

27. Upon reviewing the trial court's ruling, it is in accordance with the parties' previously presented evidence and within the bounds of sound judicial discretion. There is nothing on file by the plaintiffs

to demonstrate that the trial court's judgment and decree are irrational, arbitrary, or contrary to judicial principles. The agreement was binding on all co-sharers, but there is no evidence that all owners agreed to the sale in order to satisfy the family's legal needs, even though defendants No. 1 and 2 signed the sale agreement on November 30, 1994, accepting an earnest sum of Rs. 125,000 and then Rs. 200,000, and agreed to sell the disputed property to the appellants for consideration of Rs 13,30,000. Though the agreement was executed, it was under compulsion and without free consent, as discussed above. Moreover, the plaintiffs have not proved that since the beginning they were/are ready and willing to perform their part of the contract. The plaintiffs are not entitled to the relief of specific performance of the contract as prayed because of the frustrated agreement, the lack of consent from all co-sharers, the lack of evidence proving that defendants No. 1 and 2 had a legal obligation to sell the property, and the lack of plaintiffs' ongoing readiness and willingness. So far as compensation is concerned, the plaintiffs have not brought on record anything that compels the court to award the compensation. So far, the refund of the amount is concerned, and the trial court has already been directed to do the same. Therefore, there is no need to interfere in the judgment and decree of the trial court. Hence, I answer points No. 1 and 4 in partly affirmative, points No. 2, 3, and 6 in the negative, and point No. 5 does not survive.

28. In light of the above discussion, observations and findings on point appeal deserve to be dismissed. Thus, I hold accordingly and proceed to pass the following order.

ORDER

1. The appeal is dismissed.
2. The costs will follow the event in the suit.

Dated:-07/03/2025

(B.D.Kulkarni)
District Judge -14, Pune

CERTIFICATE

I affirm that the contents of this P. D. F. file Order are the same word for word as per the original Order.

Name of the Court:- **Shri. B.D. Kulkarni**
District Judge- 14 &
Additional Sessions Judge, Pune.

Name of the Steno:- **D. H. Patil**
Stenographer (Grade-I)

Date of Order:- 07/03/2025

Order signed by
presiding officer on:- 13/03/2025

Order uploaded on:- 13/03/2025