

Presented on	13-04-2011
Registered on	13-04-2011
Decided on	23-12-2016
Duration	5Y 8M 10D

In the court of 5th Addl. Judge, Small Causes Court, Pune At Pune.

(Presided over by Ms. C.P. Jain)

Spl.C.S.No. 848/2011
Exh.

Mansoor Mahammad Momin
Age 52 yrs, Occ. Agri. & Business
R/at Somwar peth, Shimpi lane,
Tasgaon, Dist. Sangli.

... Plaintiff

Vs

1] Harilal Narayan Ghule
Age 49 yrs, Occ. Agriculture,
R/at Manjri Bk, Tal. Haveli,
Dist. Pune.

2] State of Maharashtra

... Defendants

**Suit for specific performance,
possession, perpetual injunction
and in alternative for Damages.**

Appearance :-

Adv. Shri. B.A.Jamadar for plaintiff.

Adv. Shri. P.N.Walunj for defendant no.1.

JUDGMENT

(Delivered on 23rd December 2016)

1] This is suit for specific performance of agreement to sell

dtd.16-5-2009 and to get possession of suit property from defendant no.1, so also for perpetual injunction restraining defendant no.1 from alienating or creating third party interest in suit property and in alternative for refund of earnest amount of Rs. 20 lakhs along with interest @ 16% p.a. from 16-5-2009 till realization of entire amount, so also, damages of Rs. 20 lakhs along with interest @ 16% p.a. from the date of suit on amount of Rs. 20 lakhs till realization of entire amount.

2] Case of plaintiff in brief is as follows :-

The property situate at Mouje Manjri Budruk within the limits of Panchayat Samittee Haveli and Zilla Parishad, Pune and Manjri Budruk grampanchayat Pune bearing S.No.152/A/4A/1 area admeasuring 19.5 R + 0H 0.5 R potkharaba i.e. total 0.20 R out of 0.19 R owned by defendant no.1 is subject matter in this judgment which is more particularly described in plaint and therefore, referred as "suit property" for sake of brevity in this judgment.

3] Defendant no.1 is owner of suit property. Defendant no.1 had put for sell the aforesaid suit property. On negotiations between the plaintiff and the defendant, the plaintiff agreed to purchase the suit property for Rs. 40 lakhs. The plaintiff paid Rs. 20 lakhs on 16-5-2009. On same day, defendant no.1 executed notarized agreement to sell in favour of the plaintiff in presence of two witnesses. It was agreed that sale deed was to executed within four months from the date of agreement to sell. The plaintiff was ever ready and willing to complete the transaction. He was also ready with the remaining amount of consideration amount. The plaintiff had now and then asked defendant

no.1 to complete the transaction. One Shri. Rajesh Ghule was the mediator in the aforesaid sale transaction. Rajesh Ghule then took the responsibility to complete the transaction. Relying upon the words of Rajesh Ghule, the plaintiff paid balance consideration amount of Rs. 20 lakhs to him. Rajesh Ghule assured him that he would get executed registered sale deed within 4 days and that the plaintiff should come down to Pune. As assured, after four days, the plaintiff came to Pune and asked Rajesh Ghule and defendant no.1 for execution of sale deed. Defendant no.1 told that he did not receive any money and so he will not execute sale deed. The plaintiff therefore, came to know that Rajesh Ghule had misappropriated his amount of Rs.20 lakhs. The plaintiff even thereafter expressed his willingness to complete the transaction. Rajesh Ghule then said that he would repay the amount and gave cheques drawn on Janseva Sahakari Bank Ltd, Hadapsar branch bearing no. 420878 of Rs.10 lakhs dtd. 14-8-2009 and no. 420879 of Rs.10 lakhs dtd. 14-8-2009. But both the aforesaid cheques were dishonoured. Therefore, he had filed criminal case bearing SCC no. 74/10 under sec. 138 of N.I. Act against Rajesh Ghule. Even thereafter the plaintiff had asked defendant no.1 to execute the sale deed. However, defendant no.1 postponed the execution of sale deed. He therefore, issued notice to defendant no.1 on 13-10-2010, which is received by defendant no.1. But, defendant no.1 had given false notice reply dtd. 29-10-2010 and refused to execute sale deed in his favour. The plaintiff further learnt that in order to dupe the rights of the plaintiff in suit property, defendant no.1 is alienating the suit property. Defendant no.1 had also issued public notice in daily newspaper. Therefore, the plaintiff had clarified by issuing public notice in daily Samana and informed about

his transaction with defendant no.1 and not to deal with suit property. The plaintiff was therefore, always ready and willing to perform his part of contract, but, the defendant on one or other ground has refused to execute the sale deed in his favour. Therefore, he is constrained to file this suit.

4] Defendant no.2 has acquired 1 R land from S.No. 152/A/4/A/1 for road. Therefore, defendant no.2 is added as party in this suit to avoid any technical latches. No relief is claimed against defendant no.2.

5] The defendant no.1 has resisted the suit by filing his written statement at exh.25. He has specifically denied all the averments in plaint, except those which are specifically admitted by him. According to him, he is not doing any work and is addicted to vices of liquor. Rajesh Ghule is his cousin brother. Rajesh Ghule taking disadvantage of his vices had cheated his family and entered false transaction with the plaintiff. Therefore, his wife had filed criminal case against Rajesh Ghule, which is pending in court. He had never entered into any transaction of agreement to sell with the plaintiff with respect to said property neither he has executed any agreement to sell, sale deed or any Issar pavati in favour of the plaintiff. There is house constructed in RCC which is bearing house property no. 3/0867 in area admeasuring 24 X 45 sq.ft. He is residing along with his wife and children in this house. He is also taking crops of wheat, maize, vegetables and there is also borewell in suit property. Therefore, suit property is their source of income. He had never intended to sell the suit property. Therefore, there was no

transaction of agreement to sell dtd. 16-5-2009 with the plaintiff as is alleged by the plaintiff. Neither he has received any consideration from the plaintiff. The agreement to sell does not bear his signature. Rajesh Ghule has prepared all false documents. Agreement to sell is document without consideration and without possession. Therefore, same is not binding on him. Therefore, there is no question of execution of sale deed. The plaintiff in order to grab the suit property and harass him, has filed this false suit. For all aforesaid reasons, he has prayed for dismissal of suit.

6] Heard Adv. Shri. B.A.Jamadar learned counsel for plaintiff, Adv. Shri. P.N.Walunj learned counsel for defendants no.1. On considering the rival contentions of both the parties, going through the documents filed on record and arguments advanced by both the learned counsels, I have framed issues at Exh. 26, which are reproduced below with findings thereupon and for reasons to follow :-

<u>ISSUES</u>	<u>FINDINGS</u>
[1] Does plaintiff prove that defendant no.1 has executed agreement to sell dtd. 16-5-2009 with respect to suit property in his favour ?	Yes.
[2] Does plaintiff prove that defendant no.1 has received the earnest amount of Rs.20 lakh towards aforesaid transaction ?	Yes.
[3] Does plaintiff prove that defendant no.1 is alienating the suit property ?	No.
[4] Does plaintiff prove that he was always	

ready and willing to perform his part of contract ?

No.

[5] Does plaintiff prove that defendant no.1 has committed breach of agreement to sell dtd. 16-5-2009 ?

No.

[6] Is plaintiff entitled to specific performance of agreement to sell dtd. 16-5-2009 ?

No.

[7] Is plaintiff entitled to relief of perpetual injunction as prayed ?

No.

[8] Is plaintiff entitled to earnest amount of Rs. 20 lakhs along with interests @ 16% p.a. from the date of agreement till realization in alternative ?

Yes.To the extent of Rs.20 lakhs @ 3% p.a. from the date of agreement to sell i.e.16-5-2009.

[9] What order and decree ?

As per final order.

REASONS

7] Plaintiff Mansoor Mahammad Momin in order to prove his case, has filed on record his evidence affidavit as PW1 at exh. 18, evidence affidavit of PW2 Sadik Mubarak Shaikh at exh.28, examined PW3 Sangita Ravindra Memane at exh.50, examined PW4 Vilas Dadasaheb Baravkar at ex.67 and closed his oral evidence vide evidence close pursis at exhs. 30 and 72.

8] The defendant no.1 Harilal Narayan Ghule in order to set out his defence has filed his evidence affidavit at exh.31 and closed his

oral evidence vide evidence close pursis at exh.39.

AS TO ISSUE NO. 1 & 2 :-

9] As both the issues are interlinked with each other, they are discussed together.

10] The testimony of PW1 Mansoor on the fact that defendant no.1 had executed agreement to sell in his favour on 16-5-2009 after receiving the earnest amount of Rs. 20 lakhs in presence of witnesses, is lending corroboration from notarized original document of agreement to sell exh.30. PW2 Sadik who is witness of agreement to sell exh.30 and PW4 Baravkar who is Notary before whom the agreement to sell exh.30 is notarized have also corroborated the testimony of PW1 Mansoor on factum of execution of agreement to sell as well as on fact that consideration was paid in their presence by the plaintiff to defendant no.1. The recitals in the agreement to sell exh.30 is also lending corroboration to testimony of PW1 Mansoor on the aforesaid facts.

11] In cross-examination of PW2 Sadik, it has come on record that transaction between the plaintiff and defendant no.1 was agreed for Rs. 40 lakhs, stamp was purchased by defendant no.1 on 16-5-2009 and same was type-written on 16-5-2009, the plaintiff paid Rs. 15 lakhs in cash and Rs. 5 lakhs in DD in total Rs. 20 lakhs in presence of Notary. The aforesaid evidence has come on record in cross-examination of PW2 Sadik on questions being put by learned counsel for defendant no.1 Shri. Walunj. It is pertinent to note that thereafter learned counsel for defendant no.1 Shri. Walunj had not given suggestion that all the

aforesaid statements made by PW2 Sadik in his cross-examination are false. As learned counsel for defendant no.1 Shri. Walunj has not denied the aforesaid statements of PW2 Sadik in his cross-examination lateron, the aforesaid statements of PW2 Sadik in his cross-examination is positive evidence on record, which is corroborating the testimony of PW1 Mansoor, PW2 Sadik and PW4 Baravkar and recitals in agreement to sell exh.30. Therefore, the aforesaid answers of PW2 Sadik on questions put by learned counsel for defendant no.1 Shri. Walunj are fatal to the defendant. The aforesaid statements of PW2 Sadik is positive evidence corroborating the testimony of PW1 Mansoor, PW2 Sadik and PW4 Baravkar.

12] The testimony of PW1 Mansoor on the fact that the sale transaction between him and defendant no.1 was agreed for Rs.40 lakhs, he paid Rs. 20 lakhs on 16-5-2009 to defendant no.1, the execution of agreement to sell by defendant no.1 in favour of the plaintiff and that it was agreed in between parties that remaining consideration amount will be paid at the time of execution of sale deed and the sale deed was to be executed within four months from the date of execution of agreement to sell exh.30, is all testimony lending corroboration from the testimony of PW2 Sadik. The aforesaid testimony of PW1 Mansoor and PW2 Sadik is not impeached in their cross-examination. The discrepancy which is pointed out by learned counsel for defendant no.1 Shri. Walunj in the statements of PW1 Mansoor and PW2 Sadik in their cross-examination on the factum of place where the transaction was agreed is not material. In cross-examination, PW1 Mansoor had stated that the transaction was agreed

at Tasgaon whereas PW2 Sadik in his cross-examination has stated that the transaction was agreed in Pune. Except this discrepancy, the testimony of PW1 Mansoor and PW2 Sadik is not impeached in their cross-examination. The aforesaid discrepancy is with respect to the place where the transaction was agreed. Even if the aforesaid discrepancy is taken as it is, it will not impeach the fact that the sale transaction was entered into in between the plaintiff and defendant no.1, the amount of consideration settled was Rs.40 lakhs, that the amount of Rs.20 lakhs were paid by the plaintiff to defendant no.1 on 16-5-2009 and the execution of agreement to sell exh.30. The aforesaid discrepancy is not material and not shaking the evidence of PW1 Mansoor and PW2 Sadik on aforesaid facts. Therefore, the arguments of learned counsel for defendant no.1 Shri. Walunj is not carrying merits on this point.

13] Coming to the testimony of DW1 Harilal, he has testified in lines of his pleadings in written statement. According to his testimony, he was not doing any work and was addicted to vices of liquor. Rajesh Ghule is his cousin brother, had taken disadvantage of his vices and cheated his family and entered this false transaction with the plaintiff. He had not signed the agreement to sell or executed said document on 16-5-2009 in favour of the plaintiff. Further according to him, neither he has received consideration from the plaintiff as is testified by PW1 Mansoor. He has also testified that his wife has filed criminal case against Rajesh Ghule, which is pending in court.

14] In the notice reply dtd. 29-10-2010, issued through Adv. S.B. Pawar, it was contended by the defendant that he has come to know for

first time on receiving notice that Rajesh Ghule had taken his signature on agreement to sell by taking disadvantage of his vices. Therefore, as per the aforesaid contentions, it has come on record that his signature is there on agreement to sell. In cross-examination of PW4 Baravkar it was suggested by learned counsel for defendant no.1 Shri. Walunj that the agreement to sell exh.30 is signed by some other person in the name of defendant no.1. Therefore, the new defence is put forth by defendant no.1 that he had not signed the agreement to sell exh.30 and that some other person had signed the agreement to sell exh.30. Therefore, it is clearly appearing that defendant no.1 is not stick up to his defence. At one stage, he is saying that on his behalf Rajesh Ghule had entered into transaction and has taken his signatures on agreement to sell exh.30, whereas shifting from his defence, it is tried to be brought on record that some other person signed on agreement to sell. Defendant no.1 further shifted his defence and tried to bring on record that he is not making signature as he is unable to read and write. The contentions in notice reply clearly reveal that defendant no.1 is able to make his signature and is signing documents. The defendant no.1 had received the notice of the plaintiff dtd. 13-10-2010. The acknowledgment card is filed on record. Said acknowledgment card is bearing the signature of defendant no.1, which is similar to signature on agreement to sell exh.30. It was argued on behalf of learned counsel for defendant no.1 Shri. Walunj that defendant no.1 is unable to read and write and therefore, is not putting signature on any document. The Vakalatnama and written statement of defendant no.1 is also having thumb impression of defendant no.1. The signature on agreement to sell exh.30 is therefore, not of defendant no.1. These arguments are without merits.

As discussed above, the acknowledgment card of having received the notice is bearing the signature of defendant no.1, which is exactly similar to signature on agreement to sell exh.30. Furthermore, defendant no.1 and others 15 had executed sale deed in favour of Sujit Ramchandra Kamte and others two. The said document of sale deed is also bearing similar signatures of defendant no.1 as like in agreement to sell exh.30. When for first time in notice reply dtd. 29-10-2010, defendant no.1 has contended that Rajesh Ghule had obtained his signature by taking disadvantage of his vices, he has admitted the fact that he is putting signature on documents. If defendant no.1 was not signing any document, in notice reply, he would have contended the fact that he is illiterate and putting thumb impression and not signing any document. But, there is no such defence in notice reply. Therefore, the arguments of learned counsel for defendant no.1 Shri. Walunj that defendant no.1 is illiterate and is unable to read and write and therefore, he is not putting his signature and therefore, agreement to sell is not bearing his signature, is without merits. PW4 Baravkar has testified that defendant no.1 had put his signature on agreement to sell as well as in the extract of Notary register exh.70 at the time of execution of agreement to sell in his presence. The testimony of PW4 Baravkar on this point is corroborated by the extract of notary register exh.70, which is showing the signature of defendant no.1, which is similar to signature in agreement to sell exh.30, the sale deed executed in favour of Sujit Ramchandra Kamte and others two as well as the acknowledgment card.

15] It is further pertinent to note that if defendant no.1 had not

executed any agreement to sell in favour of the plaintiff then, in such circumstances, on receipt of notice exh.21 on 13-10-2010 from the plaintiff and upon getting knowledge of aforesaid fact of agreement to sell exh.30, he would have filed police complaint against the plaintiff for forgery as well as for cheating him. There is nothing on record that defendant no.1 has lodged any complaint against the plaintiff after receiving notice exh.21 dtd. 13-10-2010.

16] Wife of defendant no.1 has filed RCC no. 1263/2013 against Rajesh Ghule under sec. 420, 465, 467, 468, 471, 383, 386 and 387 r/w 34 of IPC. Neither in this case, the plaintiff is arrayed as accused. This conduct of defendant no.1 is also not inspiring confidence in his testimony on the fact that he had not executed agreement to sell dtd. 16-5-2009.

17] The further testimony of DW1 Harilal that Rajesh Ghule had taken disadvantage of his vices and executed agreement to sell in favour of the plaintiff is also not inspiring confidence for simple reason that if there was truth in this testimony of DW1 Harilal, how DW1 Harilal would attend all the dates in court along with Rajesh Ghule. In cross-examination, DW1 Harilal unequivocally stated that he is coming in court and attending all dates along with his wife and Rajesh Ghule. He further admitted that his relations with Rajesh Ghule are very cordial. If as is testified by him, Rajesh Ghule had taken disadvantage of his vices and entered into false transaction with the plaintiff and did not receive any consideration from the plaintiff, how defendant no.1 would come and attend in court along with Rajesh Ghule on fixed dates so also, can

have cordial relations with him. Filing of criminal case bearing no. 1263/2013 is also appearing to be the collusion of wife of defendant no.1 and Rajesh Ghule. If as is testified by DW1 Harilal, Rajesh Ghule had cheated them by taking disadvantage of vices of DW1 Harilal, how wife of defendant no.1 can also have cordial relations with Rajesh Ghule and how she can accompany Rajesh Ghule in court on the dates fixed in this case. On this count also, defence of defendant no.1 is not trustworthy.

18] Prior cross-examination, at the time of verification of evidence affidavit of DW1 Harilal, when this court had asked DW1 Harilal as to whether he has read over the contents in his evidence affidavit, he stated that he has not read the contents in his evidence affidavit. Therefore, learned counsel for defendant no.1 Shri. Walunj had read over all the contents in evidence affidavit to defendant no.1 and thereafter there was further recording of evidence. In cross-examination, DW1 Harilal has clearly admitted that he is not having knowledge as to what is present suit and with respect to which property present suit is filed, he has not read the suit or his evidence affidavit. He has also stated that he has not received any suit notice. He further categorically admitted that his wife has instructed his lawyer to draft the written statement as well as his evidence affidavit, all the contents in written statement and his evidence affidavit are drafted as per the instructions of his wife and he is not having knowledge about them.

19] The aforesaid admissions and the conduct of DW1 Harilal prior recording his evidence showing ignorance about the contents in

evidence affidavit at the time of verification of his evidence affidavit clearly reflect that defendant no.1 is not having any knowledge about the suit and the transaction and that all the contentions in written statement are the instructions of his wife. In light of admissions of DW1 Harilal on the aforesaid facts, there is no doubt to conclude that the contentions raised in written statement and evidence affidavit are not from his mind but, from the mind of his wife. Further as discussed above, the cordial relations between Rajesh Ghule and his wife also substantiate that the contentions in written statement are also from the mind of Rajesh Ghule, in collusion with wife of the defendant as is rightly argued by learned counsel for plaintiff Shri. Jamadar.

20] From all aforesaid discussion, what can be concluded is that the defendant is not stick up to his defence. He is shifting in his defence, which is only possible when the person tries to unfold untrue facts. For all aforesaid discussion, the testimony of DW1 Harilal which is not lending corroboration from any oral evidence or documentary evidence on record, is not trustworthy as against the testimony of PW1 Mansoor, which is lending corroboration from the oral evidence of PW2 Sadik to PW4 Baravkar, the recitals in agreement to sell exh.30, the acknowledgment card and the extract of notary register exh.70. Therefore, the testimony of DW1 Harilal is hardly digestible as against the testimony of PW1 Mansoor. The recitals in agreement to sell exh.30 is having specific mention about acknowledgment by defendant no.1 of having received amount of Rs.20 lakhs from the plaintiff. Though the details that amount of Rs. 5 lakhs was paid by DD and the amount of Rs. 15 lakhs was paid in cash, is not recited in agreement to sell exh.30 but

was stated by PW1 Mansoor and PW2 Sadik in their cross-examination, it cannot be said to be fatal to the plaintiff. The testimony of PW1 Mansoor and PW2 Sadik on this fact that the plaintiff had paid Rs. 20 lakhs to defendant no.1 on 16-5-2009 is not impeached in their cross-examination. On the contrary, the recitals in agreement to sell exh.30 are corroborating the testimony of PW1 Mansoor and PW2 Sadik. The testimony of PW4 Baravkar is also lending corroboration to the testimony of PW1 Mansoor and PW2 Sadik on this fact. Though PW4 Baravkar could not state the details of payment of Rs. 20 lakhs in his cross-examination, same will not be fatal to case of the plaintiff, as the factum of amount being paid by the plaintiff to defendant no.1 is not impeached in cross-examination of any of witnesses of the plaintiff.

21] The notary register is not having the signature of inspection of the register by District Court, as is required by rules, so also the fact that agreement to sell exh.30 is not having the photograph of defendant no.1 on it, is fatal to case of the plaintiff, was argued by learned counsel for defendant no.1 Shri. Walunj. The aforesaid technical aspect of notary register not having the signature of inspection of registration, cannot be sole ground to disbelieve the case of the plaintiff. Furthermore, agreement to sell exh.30 is clearly revealing that earlier there was photograph affixed in front of name of defendant no.1, but, later on it is not found at the time of evidence, which will go to show that the photograph subsequently had fallen from the document or is being removed. PW4 Baravkar has clearly testified that when document was executed, the photograph of defendant no.1 was affixed which is lending corroboration from the marks of fixation of photographs on

document exh.30. Therefore, the arguments on learned counsel for defendant no.1 Shri. Walunj on this point is also not carrying merits.

22] It is pertinent to note that as per amended Sec. 53-A of T.P. Act, Sec.17 of Registration Act the document of agreement to sell requires registration. The agreement to sell exh.30 is not registered document. This fact is against the plaintiff. Therefore, the prayer of the plaintiff with respect to specific performance can hardly be accepted in light of legal position as discussed above. To this extent, the testimony of PW1 Mansoor cannot be accepted. The arguments of learned counsel for plaintiff Shri. Jamadar on this point, therefore, cannot be countenanced. The plaintiff cannot ask for specific performance of agreement to sell exh.30 on this ground, so also, as issue no.4 is answered in negative, which is discussed in later part of this judgment, the plaintiff cannot get the relief of specific performance. With aforesaid discussion, I answer issue no. 1 and 2 in affirmative.

AS TO ISSUE NO.4 :-

23] PW1 Mansoor has testified that he was always ready and willing to perform his part of contract. It is pertinent to note that agreement to sell exh.30 is having clear recitals that the sale deed is to be executed within 4 months from the date of agreement to sell. There was nothing to be performed by either of the parties to document of agreement to sell exh.30, prior execution of sale deed. Therefore, the plaintiff was to pay the balance consideration amount and get executed the sale deed from defendant no.1. Except bare words of PW1 Mansoor,

there is nothing on record either in form of letter or notice that the plaintiff had asked defendant no.1 to accept the remaining amount of consideration and to execute the sale deed in his favour. The testimony of PW1 Mansoor that he paid Rs. 20 lakh to Rajesh Ghule and that Rajesh Ghule agreed to get executed the sale deed within 4 days, however, did not complied and that he came to know that Rajesh Ghule had cheated him and thereafter, Rajesh Ghule had given two cheques bearing no. 420878 and 420879 of Rs. 10 lakhs each and they were dishonoured, are not substantiated by any details or documentary evidence on record. No doubt, it is averred by the plaintiff that S.C.C. no. 74/2010 was filed against Rajesh Ghule, but, there is no certified copy of complaint on record. Neither there are xerox copies of aforesaid cheques on record. Except the bare words of PW1 Mansoor on this fact, there is no oral or documentary evidence on record. It is further important to note that when did plaintiff pay balance consideration amount of Rs. 20 lakhs to Rajesh Ghule is not testified in detail on record. Neither there is any oral or documentary evidence on record on this factum. When aforesaid evidence is not on record, how bare words of PW1 Mansoor can be concluded as trustworthy on this fact to believe this fact.

24] Furthermore, the plaintiff was having balance consideration amount of Rs. 20 lakhs with him since the date of agreement to sell till today, is not substantiated on record. The burden is on the plaintiff to show that he was having sufficient funds and was always ready and willing to perform his part of contract i.e. for paying the remaining consideration amount. There is no oral or documentary evidence on

record to substantiate the fact that the plaintiff had the remaining balance consideration amount with him since the date of execution of agreement to sell till today.

25] Further, as discussed above, there is no evidence on record to substantiate that the plaintiff had intimated defendant no.1 from time to time to execute the sale deed in his favour by accepting remaining consideration amount. In absence of cogent evidence on record, bare testimony of PW1 Mansoor cannot be digestible. Therefore, the arguments of learned counsel for plaintiff Shri. Jamadar on this point are not acceptable. The testimony of PW1 Mansoor on this fact, cannot be believed. I conclude that the plaintiff has failed to prove that he was always ready and willing to perform his part of contract. Therefore, I answer issue no.4 in negative.

AS TO ISSUE NO.3 :-

26] Though PW1 Mansoor testified that defendant no.1 is alienating the suit property, there is nothing on record to substantiate this testimony. On the contrary, in cross-examination of DW1 Harilal, it has come on record that he is residing along with his wife and children in house in suit property. When there is no evidence on record except bare words of PW1 Mansoor to substantiate that defendant no.1 is alienating the suit property, the testimony of PW1 Mansoor on this fact cannot be trustworthy evidence. Therefore, I conclude that the plaintiff failed to prove this fact. Therefore, I answer issue no.3 in negative.

AS TO ISSUES NO.5, 6, 7 & 8 :-

27] As all the issues are interlinked with each other, they are discussed together.

28] As discussed in Issue nos. 1 and 2, the plaintiff is not entitled to specific performance of agreement to sell exh.30 dtd. 16-5-2009. Issue no.4 is answered in negative. There is no evidence on record to substantiate that the plaintiff had asked defendant no.1 to execute sale deed in his favour by accepting the remaining consideration amount. Therefore, the bare words of PW1 Mansoor that defendant no.1 has committed breach of agreement to sell dtd. 16-5-2009 on the factum of specific performance of agreement to sell cannot be believed. But, issue no.1 and 2 are answered in affirmative. Therefore, the testimony of PW1 Mansoor on the fact that he is entitled to refund of earnest amount, has substance. Therefore, to this extent, the plaintiff is entitled to earnest amount of Rs. 20 lakhs from defendant no.1. Considering the contest given by defendant no.1 in this case by denying the execution of agreement to sell and considering the fact that earnest amount of Rs.20 lakh is enjoyed by defendant no.1 since date of agreement to sell till today, it is appropriate that defendant no.1 pays the amount of interest @ 3% p.a. to the plaintiff. Therefore, I answer issue no.5, 6, 7 in negative and issue no. 8 in affirmative.

29] In the backdrop of legal position, facts and circumstances and having arrived at aforesaid findings, suit of plaintiff deserves to be

partly decreed with costs. In result, I proceed to answer issue no. 9 by following order.

ORDER

[1] Suit is partly decreed with proportionate costs.

[2] Defendant no.1 shall pay the earnest amount of Rs.20 lakhs along with interest @ Rs.3 p.a. from the date of agreement to sell i.e. 16-5-2009 till entire realization of amount to the plaintiff within two months of this order.

[3] The prayer of the plaintiff with respect to specific performance is dismissed.

[4] The prayer of the plaintiff with respect to perpetual injunction is also dismissed.

[5] Decree be drawn up accordingly.

Judgment is dictated and pronounced in open court.

Pune.
Dt.23-12-2016.

(Smt. C.P.Jain)
5th Addl. Judge,
Small Causes Court, Pune.

CERTIFICATE

I affirm that the contents of this PDF file judgment are same word for word as per original judgment.

Name of steno	:	M.U.Bandiwadekar
Name of Court	:	Ms. C.P.Jain, V Addl. Judge, Small Causes Court, Pune.
Date of dictation	:	23-12-2016
Date of transcription	:	27-12-2016
Judgment checked & signed by PO on	:	31-12-2016
Judgment uploaded on	:	31-12-2016