MHNS020000832013	Filed on	02/01/2013		
	Registered on	09/01/2013		
	Decided on	02/05/2026		
	Duration	Years	Months	Days
		13	04	00

THE COURT OF 6th Jt. CIVIL JUDGE SENIOR DIVISION, NASHIK, AT NASHIK.

(Presided over by Archana G. Behere)
(JO Code – MH01873)

Special Civil Suit No.24/2013
Exh. No.98.

1.	Pradip Madanlal Gupta Age – 55yrs., Occu – Agri., Builder & Developer	
2.	Sanjeev Ramchandra Adgaonkar Age – 54yrs., Occu – Agri., Builder & Developer Both R/o – First Floor, Sahyadri House, MICO Circle, Tryambak Road, Nashik.	**..... Plaintiffs**

VERSUS

1.	Baburao Ramchandra Gurav Age – 63yrs., Occu – Agri. & Business,	
2.	Arvind Baburao Gurav **Deceased Through Legal Heirs** **2.1** Tanuja Arvind Gurav Age – 40yrs., Occu - **2.2** Urvi Arvind Gurav Age – 16yrs., Occu - **2.3** Omkar Arvind Gurav Age – 11yrs., Occu -	

	2.1 Sunita Arvind Gurav Age – 64yrs., Occu - All R/o – Ashwini, S.No.37, Sane Guruji Society, Sainikwadi, Vadgaon Sheri, Pune.	
3.	Sunita Baburao Gurav Age – 56yrs., Occu – Household & Agri., R/o – Ashwini, S.No.37, Sane Guruji Society, Sainikwadi, Vadgaon Sheri, Pune.	**….. Defendants**

Suit for specific performance, possession etc.

Advocate for plaintiff : Shri. P. M. Kachole
Advocate for defendants : Shri. N. M. Gorwadkar

JUDGMENT
(Delivered on 02/05/2026)

----

1. Plaintiff is seeking specific performance alongwith possession and alternatively has prayed for recovery of compensation of Rs.80,00,000/- from defendants.

Suit Property

2. Landed property bearing G.No.154/2A, admeasuring about 1H.10R situated at Belgaon Dhaga, Tal & Dist – Nashik (more particularly described in plaint paragraph no. 1 and hereinafter referred as “suit property” for brevity sake).

Plaintiff's case in brief

3. According to plaintiff, defendant nos.1, 2 and Raghuveer Adakil had purchased suit property from its erstwhile owner, Dashrath Dhage as per registered sale deed dt.31/05/2007.

Shri.Raghuveer Adakil has sold his share to defendant no.3 as per registered sale deed dt.07/05/2009. Thus, suit property is owned and possessed by defendants. Plaintiffs are doing business of sale and purchase of constructed properties, plots, agricultural properties and to develop landed properties under the name and style “Surya Properties”. Plaintiffs came to know that, defendants have decided to sell suit property. As plaintiffs were interested in purchasing suit property, they approached defendants and expressed their willingness to purchase suit property at market price. At that time defendant no.1 told plaintiffs that Chartered Accountant Shri. Prashant Munot is their partner and they do not enter into any transaction without consulting with him. Defendants asked plaintiffs to have further discussion with Prashant Munot and told that they will agree with whatever that will be decided by Prashant Munot. Accordingly, plaintiffs informed Prashant Munot that they are interested in purchasing suit property. Plaintiff no.1 went to Pune to have discussion with defendants. At that time Prashant Munot was also present. After preliminary discussion, Prashant Munot asked plaintiffs to come on 04/11/2012 to have final discussion. Accordingly, on 04/11/2012 plaintiffs went to pune alongwith their employees Yogesh Bhadane and Rajendra Somwanshi. At that time Prashant Munot was also present there.

4. Plaintiffs have further contended that, after final discussion an oral agreement was settled between plaintiffs, defendants and Prashant Munot. When plaintiffs insisted for written agreement, defendants and Prashant Munot denied to have anything in writing and told plaintiffs that, if plaintiffs are ready to transact as per their wish, then and then only they will sell suit property to plaintiffs. Therefore, by trusting their words, plaintiffs have entered into oral agreement for sale with defendants. As per the terms and conditions that were orally settled between them, the sale consideration of suit property was fixed at Rs.79,27,500/-, out of which an amount of Rs.5,00,000/- was paid in cash on the same day as an earnest amount. Defendants have denied to give receipt thereof in writing. Sale deed was agreed to be executed till 31/12/2012 and it was agreed that possession will be handed over at the time of execution of sale deed. It was decided that, plaintiffs will pay entire amount to defendants in Pune and thereafter, defendants will come to Nashik for execution of sale deed. It was agreed to carry out measurement of suit property prior to execution of sale deed, for ascertaining actual area thereof.

5. According to plaintiffs, thereafter they collected relevant revenue record of suit property, obtained valuation thereof, prepared draft of sale deed and sent the same for approval to defendants through Elegant Courier on 11/12/2012. Plaintiffs have pointed out that the stamp of earlier sale deed of defendants is in different name. Therefore, Prashant Munot asked plaintiffs to send him draft of required affidavit. Accordingly, plaintiffs have sent draft of affidavit by fax on 13/12/2012. Plaintiffs hurriedly sold some of their properties at low price, for arranging money to pay sale consideration to defendants and asked them to fix the date for execution of sale deed. However, defendants and Prashant Munot avoided the same for one reason or the other. Plaintiffs have realised that, defendants are avoiding execution of sale deed due to greed of excess amount. On 26/12/2012 defendants have denied to execute sale deed and asked plaintiffs to come to Pune for receiving earnest amount paid by them. Due to defendants' denial to complete said transaction, plaintiffs have suffered and will have to suffer huge losses. Therefore, plaintiffs are constrained to file present suit.

<u>Defendants' case in brief</u>

6. Defendant nos.1 to 3 filed their written statement at Exh.17 and denied all the contentions of plaintiffs. Defendant nos.2.1 to 2.3 adopted written statement at Exh.17 by filing pursis at Exh.80. According to them, they have never entered into any transaction with plaintiffs in respect of suit property. Therefore, there is no question of accepting any amount from plaintiffs. Plaintiffs have prepared imaginary and concocted story and have filed present false suit to grab suit property by harassing defendants.

7. According to their further contentions, on 03/11/2012 a real estate agent, Yogesh Bhadane came to defendant no.1, introduced him with plaintiffs and told that plaintiffs are interested in purchasing suit property. Plaintiffs told him that, as their property which is adjacent to suit property is acquired for road widening, if they purchased suit property they can conveniently enjoy their own property. At that time, defendant no.1 specifically told them that, he alone cannot take decision without consulting with his wife and son. Thereafter, when defendant no.1 talked with his son and wife, both of them told him that, right now there is no necessity to sell suit property. Thus, no transaction was ever settled with plaintiffs. Therefore, plaintiffs are not entitled to claim any relief. Hence, they have prayed for dismissal of suit with compensatory costs.

Issues

8. From material propositions of law and facts asserted by one party and denied by the other, following issues are framed at Exh.34, to which findings are recorded for the reasons given below :-

Sr. No.	Issues	Findings
1.	Whether defendant has agreed to sell his suit land to plaintiff for consideration of Rs.79,27,500/- by executing an oral agreement for sale dt.04/11/2012 ?	**No**
2.	Whether plaintiff has paid Rs.5,00,000/- to defendant as an earnest money at the time of entering into agreement for sale ?	**No**
3.	Whether plaintiff is ready and willing to perform his part of contract for agreement for sale ?	**No**
4.	Whether plaintiff is entitled to the relief of specific performance as prayed ?	**No.**
5.	Whether plaintiff is entitled for the relief claimed ? If yes, what ?	**No.**
6.	What order and decree ?	**As per final order**

:: REASONS ::

AS TO ISSUE NOs. 1 TO 6

9. In support of their contentions plaintiffs have filed affidavit of examination-in-chief of plaintiff no.2 at Exh.39 and had reiterated all the contentions in plaint. Plaintiffs have examined their employees Yogesh Bhadane as PW-2 at Exh.83. The evidence affidavit of their another employee namely Rajendra Somwanshi filed at Exh.84 is subsequently not pressed by plaintiffs. Plaintiffs closed their evidence as per pursis at Exh.85. Defendant no.1 declined to lead oral evidence by filing pursis at Exh.87.

10. As all these issues are interlinked, in order to avoid repetition all are taken together for discussion. Though the decree for specific performance is a discretionary power, yet the Court is not bound to grant such a relief merely because it is lawful to do so and the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles of law, therefore, the discretion should be properly exercised keeping in view the settled principles of law as envisaged in Section 20 of the Act. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions which are required to be gone into for grant of the relief of specific performance, are first, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property; second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.

11. Plaintiffs have approached the court by filing present suit claiming specific performance alongwith possession. Plaintiffs are claiming reliefs from the court and therefore, primary burden was on plaintiffs to prove their contentions. As pointed out earlier, in support of their contentions plaintiff no.2 had filed his affidavit of examination-in-chief and plaintiffs have examined one of their employee, who according to them was present at the time when plaintiffs and defendants had entered into oral agreement for sale. Plaintiffs' entire case is based on oral agreement for sale. Therefore, facts and circumstances of the present case must be scrutinized to find whether plaintiffs have been able to prove that there was a concluded oral agreement between the parties in order to seek decree for specific performance of contract in their favour.

12. According to plaintiffs, transaction related to sale of immovable property for a sum of Rs. 79,27,500/- was fixed orally and a sum of Rs.5,00,000/- was paid as an earnest amount without reducing anything in writing. It is not the case of plaintiffs they are well acquainted with defendants, are having cordial relations since long and therefore, they entered into alleged transaction by merely relying their words. During his cross-examination, plaintiff no.2 has stated that, he had meet defendant no.1 for twice i.e. on 03/11/2012 and 04/11/2012. In plaint as well as in statement on oath of plaintiff no.2, plaintiffs have contended that they are doing business of sale-purchase of landed properties, plots etc. During his cross-examination plaintiff no.2 has stated that, he is doing said business since last 18 years, their yearly turn over is 3-4 crores. In such circumstances contention of plaintiffs that, they have entered into oral sale transaction of such a huge amount without reducing anything in writing appears to be not reliable.

13. Defendants have totally denied to have entered into any agreement with plaintiffs in respect of suit property and to have accepted any earnest amount. According to defendants, on 03/11/2012 a real estate agent, Yogesh Bhadane came to defendant no.1, introduced him with plaintiffs and told that plaintiffs are interested in purchasing suit property. Thus, according to defendants firstly PW-2 Yogesh Bhadane had approached defendant no.1 as an estate agent and introduced him with plaintiffs. In plaint as well as in statements on oath of plaintiff no.2 and PW-2 Yogesh Bhadane, plaintiffs have specifically contended that Yogesh Bhadane is their employee. During his cross-examination at Exh.39 plaintiff no.2 has specifically admitted that, sometimes PW-2 Yogesh Bhadane who is their employee used to bring some landed properties for sale to them. Thus, plaintiff no.2 indirectly admitted that PW-2 Yogesh Bhadane was/is also searching landed properties for plaintiffs. During his further cross-examination PW-1 has specifically admitted that, PW-2 Yogesh has introduced them with defendant no.1.

14. It is the further contention of defendants that, plaintiffs told defendant no.1 that, as their property which is adjacent to suit property is acquired for road widening, if they purchased suit property they can conveniently enjoy their own property. During his cross-examination at Exh.39 PW-1 has specifically admitted that, their property which is adjacent to suit property is acquired for road widening.

15. All these facts are sufficient to prove that plaintiffs being adjacent owners were interested in, rather were in need of purchasing suit property for the convenient use of their existing property. In plaint, plaintiffs have vaguely contended that they were interested in purchasing suit property. However, plaintiffs have intentionally suppressed the reason behind their interest which is sufficient to convert their interest in need. Thus, plaintiffs have suppressed material fact from the court. From thorough perusal of plaint it is clear that, plaintiffs have tried to portray that defendants were interested/intended to sell suit property.

16. It is the contention of plaintiffs that, though they were insisting defendants for reducing the terms and conditions settled between them in writing, defendants were denying to have anything in writing. In such circumstances, plaintiffs at least could have paid alleged earnest amount by cheque or by bank transfer or by other modes. But they have failed to do so. Plaintiffs have not produced any documentary evidence to prove that, earnest amount of Rs.5,00,000/-is actually passed from plaintiffs to defendants. In order to prove alleged payment plaintiffs have relied upon Income Tax Return. In his cross-examination said Income Tax Return is given Exhibit number. Though Income Tax Return at Exh.66 is of the assessment year 2013-2014 he has contended that the same is of the year 2012-2013. From thorough perusal thereof it is clear that, the same do not bear any entry to show that, an amount of

Rs.5,00,000/- is paid by plaintiffs to defendants.

17. According to plaintiffs, it was agreed that prior to execution of sale deed defendants will carry out measurement of suit property for ascertaining the area. Though plaintiffs have contended that they have sent draft of sale deed to Prashant Munot, they have not averred a single word whether measurement of suit property was carried out as agreed or what efforts they have taken to get measured suit property.

18. Plaintiffs have contended that, after settlement of alleged transaction they have obtained valuation report of suit property from the office of Sub-Registrar. However, no such valuation report is produced on record by plaintiffs. On the contrary, during his cross-examination plaintiff no.2 has admitted that, they have not obtained such valuation report.

19. According to plaintiffs, it was agreed that plaintiffs will publish paper notice for title verification. However, plaintiffs have not produced any documentary evidence to show that, they have published any such notice. During his cross-examination at Exh.39, plaintiff no.2 has admitted that, they have not given such public notice and has not taken title search.

20. It is the contention of plaintiffs that, thereafter they have hurriedly sold some of their properties at low price, for arranging money to pay sale consideration to defendants and asked them to fix the date for execution of sale deed. However, plaintiffs have not produced any documentary evidence to prove their contentions.

21. No doubt law recognises oral agreement of sale and there is no requirement of law that an agreement or contract of sale of immovable property should only be in writing. But in a case where plaintiff comes forward to seek a decree for specific perforamnce of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies upon plaintiff to prove that there was consensus ad idem between the parties for a concluded oral agreement for sale of immovable property. In such circumstances, burden of proof naturally lies heavily on plaintiffs to prove the alleged agreement of sale by reliable, cogent and convincing evidence.

22. However, in order to prove their case plaintiffs have not examined any independent witness. According to plaintiffs, in this entire process Shri. Prashant Munot, the chartered accountant of defendants, has played active role. According to plaintiffs, they have sent draft sale deed and draft affidavit to Prashant Munot. The courier receipts filed on record by plaintiffs are not duly proved and therefore are not exhibited. Even then on perusal of those receipts filed alongwith list at Exh.41 it is clear that, those receipts are of something which was sent by Surya Properties to Prashant Munot. During his cross-examination plaintiff no.2 has specifically admitted that, Surya Properties is having no concern with alleged transaction. In such circumstances, those receipts are not sufficient to corroborate contentions of plaintiffs that, they have sent sale deed draft and affidavit draft. Whatever was sent by Surya Properties was sent to Prashant Munot and not to defendants. However, plaintiffs have not produced any documentary evidence to show that, Prashant Munot was duly authorised by defendants to take active part in alleged transaction. According to defendants, though Prashant Munot was their chartered accountant, he was having no authority to settle any transaction in respect of properties owned and possessed by defendants. During his cross-examination plaintiff no.2 has stated that he did not know whether any authority letter was given to Prashant Munot in respect of suit property. In such circumstances, contention of plaintiffs that without there being proper authorisation, on mere say of defendants they were talking with Prashant Munot in respect of alleged transaction of suit property. In such circumstances, plaintiffs could have examined said Prashant Munot to corroborate their contentions. However, they have not done so.

23. It is the contention of plaintiffs that, they have sent draft sale deed and draft affidavit to Prashant Munot. As pointed out earlier except abovementioned courier receipts plaintiffs have not produced on record any documentary evidence to show that, they have sent draft sale deed or draft affidavit to defendants. Admittedly, defendants are the real owners of suit property and Prashant Munot is having no right, title or interest therein. Plaintiffs have contended that, defendants asked them to talk with their partner, Prashant Munot. However, plaintiffs have not produced any document to show that, Prashant Munot is/was the partner of defendants. In such circumstances, a person of ordinary prudence will have sent drafts to original owners instead of their alleged authorised partner. So also mere filing some courier receipts is not a reliable evidence to conclude that, plaintiffs have sent drafts of sale deed and affidavit in respect of suit property to Prashant Munot.

24. In such circumstances, mere oral contentions of plaintiff no.2 and one of their employee are not sufficient to prove reliably that there exists a valid and enforceable contract between plaintiffs and defendants. A decree for specific performance cannot be granted based on the deposition of PW-1 who is plaintiff no.2 and one other interested witness. During his cross-examination at Exh.83 PW-2 Yogesh has specifically admitted that, he is serving with plaintiffs since last 20-22 years, he is their loyal employee, the livelihood of his family is dependent on the salary of his service. During his cross-examination, PW-2 Yogesh has stated that in his presence no transaction had taken place between Gupta, Adgaonkar and defendants. In such circumstances, deposition of said interested witness brought forth by plaintiffs appears not to be sufficient to corroborate their contentions reliably.

25. It is settled law that, in a suit for specific performance of contract, the Court has to keep in mind Section 20 of Specific Relief Act, 1963 which section preserve Judicial Discretion to grant decree for specific performance. The Court is not bound to grant specific performance merely because it is lawful to do so. The Court should meticulously consider all facts and circumstances of the case and to see that it is not used as an instrument of oppression to have an unfair advantage not only to the plaintiff but also to the defendant.

26. Ld. Advocate for defendants has misconstrued Issue No.1 and has vehemently argued that, burden to prove the same is upon defendants and as defendants have not entered into witness box, adverse inference must be drawn against them. However, as pointed out earlier defendants have nowhere admitted to have entered into any transaction of sale with plaintiffs. Defendants have flatly denied to have entered into or settled any transaction with plaintiffs. On the contrary, it is the contention of plaintiffs that, defendants have agreed to sell suit property to them for total consideration of Rs.79,27,500/- by entering into oral agreement. In such circumstances, merely because issue no.1 do not start with "Whether plaintiffs prove that", it cannot be said that, burden to prove issue no.1 is on the defendants.

27. From the above discussion it is clear that, plaintiffs have failed to prove reliably that there exists a valid and enforceable contract between them and defendants. So also plaintiffs have failed to prove that, they had paid any amount to defendants as earnest money for alleged transaction in respect of suit property. Mere oral contentions of plaintiff no.2 and one of their employee are not sufficient to discharge the heavy burden lies upon them to prove existence of alleged oral agreement. As plaintiffs have failed to prove the existence of agreement, there is no question of ready and willingness to perform terms and conditions thereof. Thus, plaintiffs have failed to prove their entitlement to claim any relief in respect of suit property. In the peculiar facts and circumstances of present suit, ratio laid down in ***M.K. Madhavan v. R. Subramaniam – 2026 BHC – AS 15364*** relied upon by Ld. Advocate for plaintiffs is not applicable to the facts of present suit. As plaintiffs have failed to discharge initial burden of proof, onus was not shifted on to defendants. Therefore, plaintiffs cannot be held entitled to any relief merely because defendants have not entered into witness box. Therefore, ratio laid down in ***Chowdamma v. Venkatappa – 2025 INSC 1038*** relied upon by Ld. Advocate for plaintiffs is not helpful to present plaintiffs. Therefore, all the issues are answered in the negative and following order is passed :-

:: O R D E R ::

1.	Suit is dismissed with costs.
2.	Decree be drawn up accordingly.

ARCHANA GANESH BEHERE
Digitally signed by ARCHANA GANESH BEHERE
Date: 2026.05.02 13:11:12 +0530

Nashik.
Date :- 02/05/2026.

(Archana G. Behere)
6th Jt. Civil Judge Senior Division,
Nashik.