

MHNG020055012022



Presented on : 10-10-2022

Registered on : 10-10-2022

Decided on : 27-11-2025

Duration : 03Y-01M-16D

Exh. No.35

IN THE COURT OF 27th JT. CIVIL JUDGE (SENIOR DIVISION)
NAGPUR, DIST. NAGPUR

(Presided over by Shri A. V. Dakhore)

REGULAR CIVIL SUIT NO. 1343/2022

Shri. Arvind Shyamrao Jichkar Age: 62 years, Occ.: Retired, R/o. Flat No. 101, Stapatya Minal Apts, Shastri Layout, Near Somalwar High school, Khamla, Nagpur-25	Plaintiff
--Vs--	
1. Smt. Surekha Wd/o Prakash Chaudhary 2. Himanshu S/o. Prakash Chaudhary Both R/o. C/o M.R. Gaikwad, Plot NO. 122, Sant. tajeshwar Nagar, Hudkeshwar Road Opp. Hudkeshwar Naka, Nagpur-44003	Defendants

**SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT AND
PERMANENT INJUNCTION.**

Appearance: Learned Adv. Harshad Sanjay Puranik for
plaintiff

Defendants Ex-parte

J U D G M E N T

(Delivered on this 27th November, 2025)

This is the suit for specific performance of contract and permanent injunction.

2] In short, it is the case of the plaintiff that, he is retired government employee. The defendant no. 1 is the wife and defendant no. 2 is the son of Late Prakash Chaudhary. Late Prakash Chaudhary was the owner of residential flat no. 101 situated on the First floor of the building known and styled as STAPATYA MINAL APARTMENT having its built up area of 24.66 Sq mtr. Together 10.13% of undivided share and interest in the leasehold rights of the piece and parcel of land bearing plot no. 178 situated in the sanctioned layout of M/s. Gajanan Sanmitra Mandal Co-operative Housing Society Ltd. Nagpur at Kh.No. 53/1, 56, 57, 71/1 and 63 Mouza Khamla, PH.No.44, Sheet No. 240/35, City Survey No. 1806, Tahsil and District Nagpur, Corporation House No. Ward No. 75 within the limits of Nagpur Corporation and N.I.T. which is more particularly described in the schedule forming part of the plaint (hereinafter referred in short as **“the suit property”**)

2-A] Plaintiff's further case is that, in the year 2002, Late Prakash Chaudhary wanted to sell the suit property to any prospective buyer for a valuable consideration. The plaintiff having received knowledge of his intention

approached him with an offer to purchase the same at a mutually agreed reasonable market rate. Upon negotiations, the terms and conditions of the sale transaction were finalized and vide Agreement of Sale dated 20/02/2002, Late Prakash Chaudhary agreed to sale the suit property to the plaintiff or his nominee on the terms and conditions set out there in for a total consideration of Rs.3,00,000/-. The said agreement was duly signed by Late Prakash Chaudhary as well as the plaintiff in presence of two witnesses and the same was duly registered before sub registrar, Nagpur-1 bearing registration No. 533/2002. It is further submitted that in pursuance and terms of the agreement plaintiff was also placed in physical possession of the suit property and he is residing in the same property since then.

2-B] It is further pleaded that, the plaintiff had paid the entire sale consideration to Late Prakash Chaudhary as mentioned in the agreement. He has obtained loan from ICICI bank for an amount of Rs. 2, 45,000/- which was duly received by Late Prakash Chaudhary at the time of registration of agreement along with an amount of Rs. 55,000/- which was paid in cash as earnest money. As such entire sale consideration was duly received and acknowledge by Late Prakash Chaudhary. At the time of agreement Late Prakash Chaudhary also handed over original documents of his sale deed as well as previous sale deeds of the property to plaintiff for the purpose of obtaining loan from bank. All these original documents

along with the registered agreement to sale were deposited by the plaintiff with his bank for obtaining the loan vide loan account no. LBNAG00000351904 with ICICI bank. It was specifically agreed at the time of agreement that Late Prakash Chaudhary shall obtain necessary NOC from NIT and also Akhiv Patrika duly mutated in his name along with other required documents for execution and registration of sale deed. The sale deed was to be executed upon compliance of all requisite formalities.

2-C] Plaintiff's further case is that, late Prakash Chaudhary unfortunately expired in a road accident somewhere in the year 2003 and hence he could not perform his part of the contract. The plaintiff had already performed his part of the contract and nothing remained to be done by him. The plaintiff was unaware of the legal heirs of Late Prakash Chaudhary. He tried very hard to locate the where about of the defendants in order to get the sale deed executed but he did not receive any knowledge about the legal heirs of Late Prakash Chaudhary i.e. present defendants even after many efforts.

2-D] Plaintiff's further case is that, recently in the month of April 2022 the plaintiff received some information and whereabouts of the defendants. He visited their house and the parents of the defendant No. 1 told the plaintiff that the defendants have gone to Mumbai for some work and also gave her mobile number to the plaintiff. The

plaintiff therefore contacted defendant No. 1 through phone on mobile no. 9423105214 and told her about the transaction and further requested the defendants to execute the sale deed upon compliance of all requisite and pending formalities. Defendant no. 1 insisted on seeing the registered agreement to sale before executing the sale deed and assured that she shall execute the sale deed immediately after receiving the copy of the said agreement.

2-E] The plaintiff further pleaded that, he was and in always ready and willing to perform his part of the contract. However, the matter was dragged on at the instance of Late Prakash Chaudhary's death for getting the whereabouts of the defendants. The plaintiff has shown his bonafides and constant willingness to purchase the said property and has also paid entire consideration under a registered agreement of sale. He also holds all the previous original sale deeds and has also repaid the entire loan amount. The plaintiff is in peaceful possession of the suit property since the date of agreement and is paying all outgoings towards the same including electricity, NMC tax etc.

2-F] It is further pleaded that, the plaintiff therefore issued a legal notice to defendants through his counsel on 27/06/2022 annexing the copy of registered agreement to sale asking them to execute the sale deed within 15 days of the receipt of the notice. The notice was duly served on the defendants but they did not claim the notice and further

failed to execute the sale deed in favour of the plaintiff. The said notice returned to the plaintiff on 09/07/2022.

2-G] Plaintiff's further case is that, the plaintiff thereafter again made several attempts to contact the defendant no.1 on phone but she did not answer. All attempts made by the plaintiff to convince and pursue the defendants to complete and conclude the transaction went in vain. Hence, the plaintiff came to know for the first time the intention of the defendants to avoid their obligation to perform the contract as agreed when the notice dated 27/06/2022 was not claimed by them and further when they stopped picking up the phone of the plaintiff. Late Prakash Chaudhary had committed breach of covenants and obligations to supply updated akhiv patrika and NOC required for executing the sale deed. That after the untimely death of Prakash Chaudhary, his legal heirs were not known and traceable for a long time even after all possible efforts and after receiving their whereabouts in the month of April 2022 upon requesting them to execute the sale deed, the defendants have failed to do so. There is no fault or breach on part of the plaintiff and the defendants are solely responsible for dragging completion of the contract. The Plaintiff is therefore entitled for specific performance of contract.

2-H] The plaintiff sought decree of Specific Performance of Contract as per agreement dated

20/02/2002. In the alternative and in case the Court comes to the conclusion that specific performance of the contract is not fit and proper relief in the facts and circumstances of the case then the plaintiff claimed refund of the amount of Rs.3,00,000/- alongwith interest at the rate of 18% p. a. The plaintiff also claimed relief of permanent injunction restraining the defendant from dealing with the suit property in any manner whatsoever or from creating third party interest therein and further disturbing the peaceful possession of the plaintiff over the suit property.

3] Defendants failed to appear inspite of service of summons by way of paper publication under Order V, Rule 20 of CPC. Therefore, suit proceeded ex-parte against defendants vide order below Exh. 1, dated 24.07.2025.

4] Plaintiff in order to substantiate claim, filed evidence affidavit of plaintiff as PW-1 below Exh.10 and closed evidence by filing pursis below Exh.29. Documents relied upon by the plaintiff shall be referred as and when required.

5] Heard learned counsel for the plaintiff at length. Following points arise for my determination and I have recorded my findings against each as follows:

<u>Sr.</u> <u>No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Does plaintiff prove that Late	Yes.

Prakash Chaoudhary agreed to sale ...
the suit property to the plaintiff for
consideration of Rs. 3,00,000/- only?

- | | | |
|----|--|----------------------------|
| 2] | Does plaintiff prove that he has performed his part of the contract ... and he was and is ready and willing to perform his part of contract? | Yes. |
| 3] | Does plaintiff prove that Late ... Prakash Chaudhary and defendants failed to perform their part of contract? | Yes. |
| 4] | Does plaintiff prove that suit is filed ... within the period of limitation? | Yes. |
| 5] | Is plaintiff entitled for decree of specific performance as prayed? | Yes |
| 6] | Is plaintiff entitled for permanent ... injunction as prayed? | Yes. |
| 7] | What order and decree | As per final order. |

REASONS

AS TO POINT NO. 1 TO 7 :-

6] Point no.1 to 7 are interlinked with each other, therefore, in order to avoid repetition all the points are taken for discussion together. Plaintiff in his affidavit of evidence below Exh. 10 has reiterated the contents of plaint. Agreement filed below Exh. 11 clearly shows that late Prakash Chaoudhary entered into agreement to sale the

suit property to the plaintiff for valuable consideration of Rs. 3,00,000/-. The agreement is duly registered at the office at Sub Registrar, Nagpur vide document No. 533 of 2002 on 20.02.2002. Perusal of the agreement shows that the consideration amount of Rs. 3,00,000/- is paid at the time agreement itself to the seller by the purchaser. It is also mentioned in paragraph No. 12 of the agreement Exh. 11 that, the vendor shall deliver the physical and vacant possession of the suit property to the purchaser at the time of registration of agreement to sale.

7] The perusal of agreement Exh. 11 at page 5 paragraph 2, 3 and 5 shows that the vendor agreed to produce the NOC of the NIT and sale deed was to be executed within four months from the date of agreement. Paragraph 5 shows that failure of vendor to execute the sale deed within stipulated time shall entail the purchaser to exercise his right of specific performance of contract. As such the time of execution of sale deed i.e. specific performance of contract was though fixed as four months from the date of agreement but it was contingent upon the compliance to be made by the vendor i.e. to produce NOC from the NIT.

8] Defendants not contested the suit. It shows that they have no objection to the claim made by the plaintiff. The documents filed below Exh. 12 is the loan agreement which shows that the plaintiff had availed loan to purchase

the suit property and for that purpose title deed of the suit property were deposited with the ICICI bank. Documents at Exh. 13 and 14 are the previous sale deeds of the suit property. It is in the possession of the plaintiff. It proves that late Prakash Chaudhary handed over said title deeds to the plaintiff to avail the loan as pleaded by the plaintiff. The document at Exh. 15 to 17 are payment receipts duly acknowledged by the late Prakash Chaudhary. Documents at Exh. 18 to 22 are tax receipts which shows that the plaintiff has paid tax of the suit property to Nagpur Municipal Corporation.

09] Exh. 23 is the notice issued by the plaintiff to defendants and Exh. 24 and 25 are not claimed envelopes. Exh. 26 and 27 are the original notices sent to defendants. Exh. 28 is property card and Article A and B are the loan closer report of ICICI bank. Death certificate filed below Exh.34 shows that Late Prakash Chaudhary died on 16.11.2002.

10] All the above oral and documentary evidence proves the case of the plaintiff that late Praksh Chaudhary entered in to agreement to sale the suit property to the plaintiff for valuable consideration of Rs. 3,00,000/-. Entire consideration was paid at the time of agreement. Late Prakash Chaudhary failed to perform his part of contract. Even defendants failed to perform their part of contract on behalf of late Prakash Chaudhary. The plaintiff has

performed his part of contract. He was and is ready and willing to perform his part of contract.

11] As per Article 54 of the Limitation Act the limitation for specific performance of contract is three years from the date fixed for the performance or if no such date is fixed then from the date when the plaintiff has notice that performance is refused. In the present case the vendor i.e. late Prakash Chaudhary died without performing his part of contract. Plaintiff tried for long to trace his legal representatives. Ultimately he succeeded to trace them but they did not pay attention to the request of the plaintiff to execute the sale deed. Lastly, when the defendants not claimed the notices issued by the plaintiff's advocate which came to knowledge of the plaintiff on 27.06.2022 and stopped picking up the phone of the plaintiff, that date has to be considered as the refusal of defendants to perform their part of contract. The suit is filed on 10.10.2022 is well within the period of limitation.

12] The plaintiff has shown all his possible bonafides to get the specific performance of the contract done. Therefore, he is entitled for the same. Being legal representatives of late Prakash Chaudhary defendants may dispose off the suit property to defeat the legal right of the plaintiff, therefore, the plaintiff is also entitled for permanent injunction as prayed. Ultimately, if defendants fail to execute the sale deed in favour of the plaintiff within

stipulated time then he will be entitled to get it executed by the officer of the court. Accordingly the suit is entitled to be decreed as prayed with cost. Hence, the following order :-

ORDER

1.	Suit is hereby decreed with costs.
2.	The defendants are directed to execute a registered Sale Deed in favour of the plaintiff in respect of the suit property, more particularly described in the schedule of the plaint, within a period of two (02) months from the date of this judgment, upon completion of requisite formalities.
3.	If the defendants fail to execute the Sale Deed within the aforesaid period, the plaintiff shall be entitled to get the Sale Deed executed through the Court under Order XXI Rule 32/34 CPC, at the costs of the defendants.
4.	The defendants are permanently restrained from selling, transferring, alienating, mortgaging, creating third-party interest, or interfering with the peaceful possession of the plaintiff in respect of the suit property.
5.	Decree be drawn up accordingly.
	Judgment dictated and pronounced in open Court.

Nagpur,
Dated:- 27.11.2025

(A. V. Dakhore)
27th Jt. Civil Judge (Sr. Dn.)
Nagpur

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CERTIFICATE

I affirm that the contents of this P.D.F. file of Judgment are word to word, as per original judgment.

Name of Stenographer : R. L.Jadhao (Gr.II)
to, 27th Jt. Civil Judge (Sr.Dn.), Nagpur.

Endorsement

As per Circular No.37/Judl. Br./2018, District and Sessions Court, Nagpur, Dtd. 31 st July, 2018		
Case argued on	...	14.10.2025
Judgment/order dictated on	...	27.11.2025
Transcription ready on	...	27.11.2025
Judgment /order checked and signed on	...	27.11.2025