

MHST040007772017



Presented on : 22/08/2017
Registered on : 24/08/2017
Decided on : 07/08/2026
Duration : yy/mm/days
08 11 16

IN THE COURT OF DISTRICT JUDGE-1 AT KARAD, DISTRICT- SATARA

(Presided over by Mr. S. C. Shinde)

REGULAR CIVIL APPEAL No.92/2017

Exh. No.16/A

Popatrao Krushna Chavan

Age- 63 yrs., Occupation- Retired soldier/Agri.
R/o.- Majgaon, Tal. Patan, District- Satara.
Now residing at Rajkapoor Dakshan
Society, S. No. 111/1, Building No. 21,
Room No.11, Vishrantwadi, Yerwada,
Pune 6.

Appellant

Versus

1. **Madhukar Shankar Mane**

Age: 49 years, Occupation- Agriculturist

2. **Charudatta Narayan Mane**

Age- 39 years, Occupation- Agriculturist
Both R/o. Choregaon, Taluka- Karad,
District- Satara.

Respondents

Appearance -

Ld. Advocate for Appellant : Mr. S. G. Mane
Ld. Advocate for Respondent No.1 : Ex- parte
Ld. Advocate for Respondent No.2 : Mr. J. S. Patil

JUDGMENT

(Delivered on 7th August 2026)

By Appeal, Original Plaintiff impugns judgment & decree dt.12th August 2011 in Special Civil Suit No.5/2009 passed by the Jt. CJSD Court, Karad, Tal.- Karad, Dist.- Satara wherein suit is dismissed.

1. In brief case is as follows (for the sake of convenience parties are hereinafter referred to as “Plaintiff & Defendants”)-
Plaintiff has filed suit for declaration & specific performance of contract. Landed property bearing Gat No.814 admeasuring 0 H 63 R situated at village Charegaon, Tal.-Karad, Dist.- Satara (hereinafter referred to as “suit property”) is subject matter of suit. Suit property is ancestral property of defendant No.1. On 12th February 1997, defendant No.1 had agreed to sell suit property for consideration of Rs.37,000/- plaintiff. On same day consideration was accepted by defendant No.1 and unregistered agreement to sell was executed in favour of plaintiff. Plaintiff was always ready & willing to complete the sale-deed. There was loan of Jyotirling Pani Purvatha Sanstha Ltd. and loan of the Sanstha is also repaid by plaintiff. Plaintiff has incurred expenses of Rs.15,000/- for development of suit property. Plaintiff is in settled possession of suit property for more than 11 years and he is taking various crops in the suit property. Defendant & other co-sharers have filed RCS No.472/1986 for partition of property including suit property. On 2nd July 2008, defendant No.1 has sold suit property to defendant No.2 for consideration of Rs.1,90,000/- when suit property is in possession of plaintiff therefore, that sale-deed is not binding on plaintiff. In suit, alternate prayer is made to pay an amount of Rs.1,07,076/- as compensation.

2. Defendants appeared in the suit but only defendant No.2 has filed written statement wherein it is pleaded that on 2nd July 2008 by registered sale deed, he has purchased suit property for consideration. From the date of sale-deed, he is in possession of suit property and cultivating it. His name is recorded in revenue record by mutation entry No.2458. As suit property is in his possession, there was no question to threat the plaintiff.
3. Notices of appeal were issued and Respondent No.2 has appeared through Ld. Advocate. Appeal proceeded ex-parte against respondent No.1.
4. Ld. advocate for appellant has filed written notes of arguments at exh.15. Ld. advocate for respondent No.2 has not argued the matter therefore, no arguments order is passed against respondent No.2.
5. Perused record. Points for determination along with my findings thereon are as follows-

Sr. No.	Points	Findings
1.	Does Plaintiff prove that defendant No.1 has executed agreement to sell in his favour?	No.
2.	Does Plaintiff prove that sale deed executed in favour of defendant No.2 is not binding on him?	No.
3.	Is Plaintiff entitled for specific performance of agreement to sell?	No.
4.	Is Plaintiff entitled for damages for breach of contract?	No.

5.	Is Plaintiff entitled for possession of suit property?	No.
6.	Does judgment & decree of the Trial Court is incorrect & illegal and needs any interference?	No.
7.	What order?	Appeal is Dismissed

REASONS

As To Point No.1 to 5 -

6. Point No.1 to 5 are discussed together to avoid repetition of facts & evidence. It is not disputed that suit property is ancestral property of defendant No.1 and RCS No.472/1986 was filed by defendant No.1 and his co-sharers for partition. It is not disputed that on 12th February 1997, defendant No.1 has executed unregistered agreement to sell in favour of plaintiff for consideration of Rs.37,000/-.
7. It is case of plaintiff that after paying consideration at the time of agreement to sell, he has repaid loan amount of Rs.55,076/- to Jyotirling Pani Purvatha Sanstha Ltd. To support this fact he has relied upon the payment receipts given by the said Sanstha but that document is not properly proved in evidence.
8. As per plaintiff, since the date of agreement to sell, he is in possession of the suit property and he has performed his part of contract but defendant No.1 failed to perform his part and has sold suit property to defendant No.2. Plaintiff has examined himself & other four witnesses to establish his case. In evidence, plaintiff has stated about agreement to sell, his

possession, payment of load of Sanstha and development of suit property at his own cost. He has further stated that he is in settled possession of the suit property. He has relied upon the receipts issued by the Sahyadri Co-operative Sugar Factory about sugrcane crop sent to that factory.

9. Plaintiff has examined Defendant No.1 & wife of Defendant No.1 as PW No.1 & 5 who has supported the case of plaintiff. PW No.2 has stated that plaintiff is cultivating suit property and his bullocks were used by plaintiff for farming. PW No.4 is witness on agreement to sell and he has stated that in his presence an amount of Rs.37,000/- was given to Defendant No.1 and he & other persons have signed that instrument.
10. From evidence on record, it becomes clear that on 12th February 1997 an instrument was executed between plaintiff & defendant No.1 in respect of suit property. As defendant No.2 failed to cross-examine the plaintiff & his witnesses, their testimony has remained unchallenged. Now question is whether or not this evidence is sufficient to prove the case of plaintiff.
11. If alleged agreement to sell & its contents are considered then from it, it becomes clear that it is not an agreement to sell but it is a mortgage. As per this instrument, defendant No.1 has agreed to pay loan of Jyotirling Pani Purvatha Sanstha Ltd. Plaintiff has not made it clear as to why he paid that amount when terms of agreement are contrary to his act.
12. Again, as per this instrument, after 5 years, defendant No.1 had to repay the loan amount and take back possession of the

suit property. If plaintiff had paid total consideration amount of the suit property then there should have such clause. While interpreting an instrument, the Court has to infer about real intention of parties. An agreement to sell does not contemplate reversal of possession. A loan transaction cannot be labelled as an agreement.

13. As per plaintiff since execution of agreement to sell, he is in possession of suit property but material on record is not sufficient to show that suit property is in possession of plaintiff. So also, bills of Sahyadri Sugar Factory, Yashwantnagar, are not sufficient to establish the fact that plaintiff is in possession of suit property. On the contrary, record shows possession of defendant No.2 to suit property.
14. There is nothing on record to show that any notice was given to defendant No.1 for performing his part of contract. As discussed earlier, instrument alleged to be agreement to sell is a mortgage, therefore it cannot be said that plaintiff can claim performance of contract and what he claim is only repayment of loan. When document on basis of which plaintiff is claiming execution of sale-deed is not actual agreement to sell therefore, relief sought by plaintiff becomes out of purview.
15. Defendant No.1 & his wife has supported the claim of plaintiff when defendant No.1 has executed registered sale-deed in favour of defendant No.2. The Trial Court has drawn the inference that there is collusion between plaintiff & defendant No.1. If fact & evidence on record is considered then there is reason to drawn such inference. Nothing has been brought on

record to show that sale-deed executed in favour of defendant no.2 is challenged by defendant No.1 before any Court. No documentary evidence is brought on record to that effect.

16. Plaintiff has failed to establish the fact that he is in settled possession of the suit property in view of agreement to sell. Said instrument is a mortgage deed. Defendant No.2 has purchased suit property under registered sale-deed and he has better title. Thus, plaintiff is not entitled for specific performance, compensation & declaration. For these reasons point No.1 to 5 are answered in negative.

As To Point No.6 -

17. If evidence on record is considered then Trial Court has properly considered evidence before it and has rightly dismissed the suit. There is no error of law and fact in dismissing the suit. Decree of the Trial Court is correct, legal and interference in decree is not required. Hence, point No.6 is answered in negative.
18. Grounds of objections mentioned in appeal memo are not sustainable for above discussed reasons therefore, appeal is liable to be dismissed. As a result, I pass following order.

ORDER

1. Appeal is dismissed.
2. Parties to bear their own costs.
3. Undecided applications, if any, stands disposed of.
4. Decree be drawn up accordingly.

5. Record & proceeding be returned back to Trial Court. Issue letter accordingly.
 6. Appeal is disposed of accordingly.
- (Dictated & pronounced in open Court.)

Karad
Date: - 07/08/2026

(Mr. S. C. Shinde)
District Judge-1, Karad,
Dist.-Satara

CERTIFICATE

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

Name of the Stenographer	:	K.D. Dhatunde
Name of the Court	:	Shri. S. C. Shinde District Judge-1 & Additional Sessions Judge, Karad-Satara.
Judgment/Order dictated declared & typed on	:	07/08/2026
Judgment/Order signed by P.O. on	:	07/08/2026
Judgment/Order uploaded on	:	07/08/2026