



1-SA-10-1994

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 10 OF 1994

1. Shri Mahadeo Sitaram Navale,
 2. Smt. Chaturabai Mahadeo Navale,
- Both Agriculturist, Resident of
Shendurjane, Taluka Wai,
District: Satara
- Appellants

Versus

1. Shri Baputao Ramchandra Navale,
deceased by his heirs.
 - A. Smt. Manukabai Bapurao Navale,
 - B. Gulab Bapurao Navale,
 - C. Subhash Bapurao Navale,
 - D. Shivaji Bapurao Navale,
 - E. Smt. Suman Ramchandra Gaikwad,
 - F. Smt. Nanda Sambhaji Jagtap,
- All of Adult and residing
at Shendurjane, Taluka Wai,
District Satara.
2. Pushpa Ankush Navale,
 3. Yogita Ankush Navale,
 4. Prabhakar Ankush Navale,
- All Agriculturist, Resident of
Shendurjane, Taluka Wai,
District Satara.
- Respondents

Mr. Amol Sakpal for Appellants.

Ms. Riddhi Gurav i/b. Mr. Ashwin Kapadnis for Respondent Nos. 3 to 4.

Mr. S.G. Deshmukh i/b. Mr. Ajit J. Kenjale a/w. Mr. Sai Rajendra Kadam for Respondent Nos. 1A to 1F.

CORAM : GAURI GODSE J.

RESERVED ON: 8th MAY 2025

PRONOUNCED ON: 8th SEPTEMBER 2025

JUDGMENT :-

Basic Facts:

1. This second appeal is preferred by the original defendants to challenge the judgment and decree passed by the first appellate court for specific performance of an agreement executed by the defendants in favour of Ankush Navale. After the execution of the agreement, Ankush expired. The respondents are the original plaintiffs. Plaintiff no. 1 is the father of Ankush, plaintiff no. 2 is the widow of Ankush and plaintiff nos. 3 to 5 are the children of Ankush and plaintiff no. 2. The second appeal was admitted on 10th January 1994 on the following substantial questions of law.

“1) Whether the first appellate court did not frame proper points for its determination while deciding the appeal?

2) Whether the first appellate court ought to have specifically addressed itself to the question of exercise of discretion as contemplated under section 20 of Specific Relief Act, 1963 and the decree passed by first appellate court is vitiated by reason of omission on the part of first appellate court to do so?

3) Whether the suit transaction evidenced by the purported agreement of sale dated 25-5-1977 was liable to be viewed in conjunction with or in context of several money, lending transactions between the parties at or about his time when the suit agreement was arrived at or independently thereof ?”

2. The agreement for sale was executed on 27th May 1977 (hereinafter referred to as “the suit agreement”). The plaintiffs contended that the suit agreement was executed by the defendants, i.e. the present appellants, for the sale of their property, i.e. Gat No. 497 (hereinafter referred to as “the suit property”). The trial court dismissed the suit. In an appeal preferred by the plaintiffs, the suit is decreed, and the defendants are directed to execute a sale deed in favour of the plaintiffs with respect to the suit property.

3. The appellants filed an application in this appeal for permission to produce additional evidence. It is the appellants' case that plaintiff nos. 2 to 5, i.e. the widow and children of deceased Ankush, executed and registered a deed of cancellation of the suit agreement. The cancellation document was executed on 23rd January 2020. Hence, the appellants filed an application to bring the document of cancellation on record as additional evidence. By order dated 27th February 2025, this court allowed the application to produce additional evidence, and the appellants were permitted to produce the original document dated 23rd January 2020 before this court.

4. Accordingly, the original document was produced before this court on 6th March 2025. The original document and the photocopy were forwarded to the learned Registrar (Judicial-I) for verification. The original document was accordingly verified by the learned Registrar (Judicial-I), and a report was placed on record. The original document was returned to the learned advocate for the appellants, and the verified photocopy was taken on record on 6th March 2025, and marked 'X' for identification. Respondent No. 2, i.e. the

widow of Ankush, expired during the pendency of the second appeal. The children of respondent no. 2 and deceased Ankush are already on record in different capacity as respondent nos. 3 and 4, hence the name of respondent no. 2 was deleted. Respondent No. 5 was deleted as he died, unmarried and issueless.

5. The impugned decree grants specific performance of the contract executed in favour of Ankush. Thus, in view of the impugned decree, the respondents claim to get the sale deed executed in their favour in terms of the contract that was executed in favour of Ankush. Respondent nos. 2 to 5 are the Class-I heirs of deceased Ankush. However, they executed a registered document and cancelled the suit agreement. The respondents do not deny the execution of the document. Hence, the document produced on record by way of additional evidence was admitted in evidence and marked as 'X1' by order dated 27th March 2025.

6. In view of the aforesaid development, additional substantial questions of law were framed under the proviso to sub-section (5) of Section 100 of the Code of Civil

Procedure, 1908 (“CPC”). The additional substantial questions of law framed on 27th March 2025, read as under:

“(I) Whether the document at exhibit X1 would be hit by the principles of Section 52 of The Transfer of Property Act 1882?

(II) Whether the document at exhibit X1 would amount to respondent nos. 2 to 5 relinquishing their right to seek specific performance of the agreement executed in favour of Ankush?

(III) In view of the cancellation of the said agreement by class-I heirs of Ankush, whether the decree for specific performance would be sustainable only in favour of respondent no. 1, i.e. father of deceased Ankush?

(IV) Whether in view of the document at exhibit X1, the suit agreement would be enforceable?”

Submissions on behalf of the appellants (defendants):

7. The plaintiffs claim specific performance of the suit agreement in favour of plaintiff no.1 alone. However, plaintiff no. 1 was not a party to the suit agreement. The suit

agreement is alleged to have been executed in favour of the deceased, Ankush. Plaintiff no.1 was a money lender, and defendant no. 1 had taken hand loans from him from time to time. Plaintiff no. 1 had issued receipts for the loans advanced, and each time he charged interest thereon. Before executing the suit agreement, plaintiff no. 1 had filed various money suits to recover the amounts advanced as loans to the defendants. Plaintiff no. 1 filed Regular Civil Suit No. 110 of 1974 for recovering an amount of Rs. 3000/-. A decree was passed in favour of plaintiff no. 1, and he also filed execution proceedings, recovering the amount due under the decree. Similarly, Regular Civil Suit No. 232 of 1975 was filed for recovering Rs. 3450/- and in execution proceedings, part of the amount towards the decretal amount was recovered. Thus, the agreement for sale was executed solely to secure the loan amount advanced by plaintiff no. 1 to the defendants. The amounts paid and receipts issued were not related to the suit agreement, but rather to the loan amount.

8. Pursuant to an order dated 26th October 1977, passed in Regular Civil Suit No. 110 of 1974, the suit property was

attached, and simultaneously, plaintiff no.1 also sought specific performance of the alleged suit agreement dated 27th May 1977. Plaintiff no. 1 had also filed Regular Civil Suit No.116 of 1983 for an injunction against defendant no.1, that he should not disturb plaintiff no. 1's possession. However, the said suit was dismissed. The plaintiffs were aware that the suit property is ancestral, and there were other co-sharers along with defendant no.1. In the absence of a partition of the suit property and in the absence of any legal necessity, the suit agreement cannot be specifically performed. The mother of defendant no. 1 had executed a Will dated 29th August 1973, and she bequeathed her share to her three grandsons. Accordingly, an application for probate was also filed and letters of administration was granted on 31st March 1980. Thus, the defendants had no authority to transfer shares of the other co-sharers to a third party, and they never intended to do so. Therefore, the suit agreement was not enforceable.

9. Plaintiff no. 1 failed to enter into the witness box to avoid cross-examination and counter questions on the loan transactions. The evidence led by his son, as his power of

attorney holder cannot be relied as rebuttal evidence to the defendants' evidence that there were loan transactions between the defendants and plaintiff no. 1. Hence, the receipts at Exhibits 41 and 42 cannot be relied upon as sufficient evidence to support the plaintiffs' contention that the defendants had agreed to sell the suit property to plaintiff no.1 or Ankush and the amounts were paid towards part consideration amount.

10. The first appellate court failed to consider that the evidence on record indicated that the transaction between plaintiff no. 1 and the defendants was a loan transaction and that the defendants never agreed to sell the suit property. The first appellate court failed to consider the provisions of Section 20 of the Specific Relief Act while granting the decree for specific performance. The first appellate court could not have interfered with the trial court's findings. Hence, the first three questions of law must be answered in favour of the appellants.

11. After the death of Ankush, in whose favour the suit agreement is alleged to have been executed, respondent

nos. 2 to 5, being the Class-I heirs, were entitled to seek specific performance of the contract in the name of Ankush. However, the said respondents executed and registered a cancellation deed, which is produced on record by way of additional evidence. The cancellation deed is not challenged by the respondents. Thus, the respondents are now precluded from raising any objection relying on the doctrine of the bar under Section 52 of the Transfer of Property Act. There is no bar in law to waive the claim to seek specific performance. Hence, the suit agreement does not survive and is not enforceable. The law of equity warrants dismissal of the suit. Hence, additional questions of law must be answered in favour of the appellants.

12. According to the learned counsel for the appellants, specific performance cannot be granted only because it is lawful to do so. Plaintiff no. 1 is a money lender, and he engineered all the events to grab the defendants' property. The conduct of the plaintiffs does not warrant any discretionary relief of specific performance. The suit property is ancestral, and based on the suit agreement allegedly executed only by the defendants, the plaintiffs would not be

entitled to any discretionary relief of specific performance in respect of the suit property.

13. To support his submissions, learned counsel for the appellants relied upon the following decisions:

a) *Krishnaji Vinayak Belapurkar Vs. Motilal Magandas Gujarati*¹.

b) *Vidhyadhar Vs. Manikrao and Another*².

c) *Man Kaur (Dead) by Lrs Vs. Hartar Singh Sangha*³.

d) *Sunil s/o Ramchandra Mahajan Vs. Sudhir s/o. Gulabrao Malode*⁴.

e) *Santosh Hazari Vs. Purushottam Tiwari (Deceased) by Lrs*⁵.

f) *Satish Kumar Vs. Karan Singh and Another*⁶.

g) *A.C. Arulappan Vs. Smt. Ahalya Naik*⁷

1 1928 SCC Online Bom 200

2 (1999) 3 SCC 573

3 (2010) 10 SCC 512

4 2023 (6) Mh.L.J 133

5 (2001) 3 SCC 179

6 (2016) 2 MLJ 40 (SC)

7 AIR 2001 SCC 2783

Submissions on behalf of respondents nos. 1A to 1F (heirs of plaintiff no. 1):

14. The cancellation document is not denied by these respondents, as it was executed by keeping them in the dark. The cancellation document, however, is not admitted by these respondents. Therefore, the document is required to be proved by leading evidence. The cancellation document is ex facie improbable. The suit was filed by the respondents for specific performance of the contract executed in favour of the deceased Ankush, which was dismissed by the trial court. In an appeal preferred by all the plaintiffs, the District Court allowed the suit and granted specific performance in favour of all the plaintiffs. Thus, by keeping plaintiff no. 1 in the dark, plaintiff nos. 2 to 4 executing the cancellation deed, which is the very basis of filing a suit for specific performance, is apparently next to impossible.

15. The cancellation document is allegedly executed by the defendants (appellants) on one hand and plaintiffs nos. 2, 3 and 4 (respondents nos. 2, 3 and 4) on the other hand. Plaintiff no. 2, the widow of Ankush, is not alive and plaintiff

nos. 3 and 4 have informed their advocate representing them before this court that their signatures were obtained by their mother, plaintiff no. 2, without informing them about the nature of the document. Hence, it is obvious that the execution of the cancellation document itself is doubtful. The cancellation document is not formally proved before this court by giving an opportunity to the respondents to cross-examine the witness proving the document. Hence, the document would not be admissible in evidence. It is important to note that the wife of plaintiff no. 1 and mother of deceased Ankush is brought on record as one of the heirs and legal representatives of plaintiff no. 1. Hence, the present respondents would inherit the interest of the mother of deceased Ankush. Hence, these respondents would be entitled to seek specific performance of the contract executed by the appellants in favour of the deceased Ankush.

16. The trial court's findings are not based on a correct appreciation of the pleadings and evidence. Therefore, the first appellate court has rightly corrected the errors. All the factual aspects are admitted by the defendants. The power of

attorney holder of plaintiff no. 1 deposed on his personal knowledge; hence, the evidence led by the son of plaintiff no. 1 needs to be relied upon in support of the execution of the suit agreement by the defendants. In the suit agreement, the defendants claimed to be the exclusive owners. The written statement states for the first time that there are other co-sharers. All the procedures were followed, and the suit agreement was executed before the Sub-Registrar. The defendants are no strangers to the plaintiffs, and they are related to defendant no.1. Therefore, equities are in favour of the plaintiffs, and the discretionary jurisdiction needs to be exercised in favour of the plaintiffs. In the present case, the first appellate court has correctly appreciated the pleadings and evidence to grant the discretionary relief of specific performance in favour of the plaintiffs. The second appeal cannot be dealt with on the factual aspects. Therefore, all the questions of law must be answered in favour of these respondents.

17. With reference to the additional substantial questions of law framed, learned counsel for these respondents submitted that the cancellation document at Exhibit X1 is hit by Section

52 of the Transfer of Property Act. The cancellation document is executed during the pendency of the present second appeal. This court, being the jurisdictional court to decide the second appeal, and the document executed pending the appeal is in respect of the suit property, which is an immovable property, becomes directly and specifically in question in this appeal. Thus, the act of executing the cancellation deed pertaining to the suit property would amount to otherwise dealing with it during the pendency of this appeal by the respondents (plaintiff nos. 2 to 4) in favour of the appellants (defendants). Hence, the rights of these respondents (heirs of plaintiff no. 1) are affected. Therefore, the cancellation document executed and registered without permission from this court must be discarded as it is hit by Section 52 of the Transfer of Property Act.

18. The cancellation document, if at all valid, will take effect subject to the outcome of this second appeal. The cancellation document at Exhibit X1, if held to be valid, would amount to respondent nos. 2 to 4 relinquishing their right. If the cancellation document is valid, the decree would be sustainable in favour of these respondents. As the document

at Exhibit X1 is hit by Section 52 of the Transfer of Property Act, the same needs to be ignored, and the suit agreement would be enforceable. Hence, the additional questions of law also must be answered in favour of these respondents, and the second appeal must be dismissed.

Analysis and conclusions:

19. I have carefully perused the pleadings and evidence on the record. The execution of the registered agreement dated 27th May 1977 is not disputed. The plaintiffs claim that it is an agreement for the sale of the suit property in favour of the deceased Ankush for a total consideration of Rs. 4000/-. After execution of the agreement, Ankush died; hence, his father, i.e. plaintiff no.1, his widow, i.e. plaintiff no. 2 and his children, i.e. plaintiff nos. 2 to 5, filed the suit for specific performance. The plaintiffs claim to have paid a total amount of Rs. 3900/- out of the total consideration. However, the defendants contended that the suit property is their ancestral joint family property, and neither did they have any authority to enter into any transaction for its sale, nor did they ever intended to do so. They contended that plaintiff no. 1 was a

money lender and the amount paid to the defendants was towards the hand loan given by plaintiff no. 1 to defendant no.1 from time to time. They denied that the suit agreement was executed for the sale of the suit property.

20. The trial court dismissed the suit, holding that the agreement was executed through misrepresentation and was a sham and bogus document. The trial court accepted the defendants' contentions that the suit agreement was not an agreement for sale, but it was executed towards security for the loan advanced by defendant no. 1. The trial court considered the undisputed facts regarding the suit filed by plaintiff no. 1 for recovering loan amount from defendant no. 1, based on a promissory note and another suit filed for recovery of amount from defendant no. 1 based on the receipts towards the loan advanced to him. The certified copies of the judgments and orders of the money decrees and their execution were produced on record. The fact that the suit agreement was executed after the suits for recovery of money were filed was held in support of the defendants' contentions that the transaction between the parties was towards the loan amount advanced by plaintiff no. 1 and that

the defendants never intended to sell the suit property to the plaintiffs by executing the suit agreement in the name of Ankush.

21. The Trial Court referred to the contradictions in the evidence of plaintiffs' witnesses regarding payments made by plaintiff no.1 and the contents of the suit agreement and held that the agreement was a sham and bogus document executed by misrepresentation for security towards the loan advanced by plaintiff no.1. The Trial Court thus held that suit agreement was not executed by the defendants for sale of the suit property and they never intended to sell the suit property. The Trial Court disbelieved the payment receipts relied upon by the plaintiffs and held that the plaintiffs failed to prove the payments; hence, they were not entitled to the alternative prayer for refund and damages.

22. In view of the questions of law framed at the time of admitting the second appeal, it is necessary to examine the findings recorded by the first appellate court. The first appellate court held that the suit agreement is registered, and the defendants do not dispute its execution. Hence, the burden was on the defendants to prove that the agreement

was not executed for sale, and the intention of the parties was to secure the loan amount advanced by plaintiff no.1. The first appellate court disbelieved the defendants' theory of a loan transaction between plaintiff no.1 and defendant no. 1 by referring to the pleadings and evidence. The first appellate court held that the defendants failed to plead and prove the particulars of the loan transaction, including the actual amounts of the loan, and the repayment schedule, along with the interest.

23. The first appellate court held that the document at Exhibit 40, coupled with the receipts at Exhibits 41 and 42, along with the oral evidence, proves the execution and registration of an agreement by the defendants for the sale of the suit property. After reviewing the oral and documentary evidence on record, it was concluded that there was no material to support the theory of misrepresentation as alleged by the defendants. The first appellate court was of the view that in the absence of any evidence to prove a contrary intention of the parties, the contents of the registered suit agreement proved the intention of the parties to enter into a transaction of an agreement to sell the suit

property. The first appellate court observed that defendant no. 1 had mortgaged his another land for Rs. 3000/- by way of a conditional sale deed. Subsequently, the land was remortgaged for a higher amount of Rs.15,000/-. Hence, the first appellate court held that due to an increase in the price of the land, the defendants were trying to avoid execution of the sale in terms of the suit agreement. The defendants failed to reply to the suit notice. Hence, the first appellate court held that the defendants were not entitled to refuse performance of their part of the suit agreement. The first appellate court noted that the suit property was ancestral joint family property. However, held that if the sisters of defendant no. 1 or his sons were found entitled to a share in the suit property, the same could be compensated by giving them their respective share in other lands. The first appellate court thus accepted the suit agreement as an agreement to sell the suit property, and the receipts produced on record at Exhibits 41 and 42 were accepted as payment towards the balance of the consideration amount. The first appellate court therefore decreed the suit for execution of the sale deed in

favour of the plaintiffs by directing the defendants to make payment of the balance consideration of Rs. 100/-.

24. The plaintiffs pleaded that the suit agreement was executed for repayment of the joint family debts and for the education of the children. The defendants pleaded that plaintiff no.1 got the suit agreement executed by misrepresentation to secure the loan amount advanced by plaintiff no.1 to defendant no 1. There is no dispute that plaintiff no.1 had advanced loans to defendant no. 1 and that he had also filed suits for recovering the amount. Admittedly, both the suits for recovery of the loan amount were filed prior to the execution of the suit agreement. One of the two suits for recovery of the loan amounts was decreed after execution of the suit agreement, and another suit was decreed during the pendency of the present suit for specific performance. The relevant dates and events surrounding the period of execution of the suit agreement and the pendency of the suit would be relevant to determining the third question of law. The relevant dates and events are as under:

- a) 1974: Regular Civil Suit No. 110 of 1974 filed by plaintiff no. 1 against defendant no. 1 for recovery of Rs. 3000/-.
- b) 1975: Regular Civil Suit No. 232 of 1975 filed by plaintiff no. 1 against defendant no. 1 for recovery of Rs. 3450/-.
- c) 27th May 1977: A registered agreement (suit agreement) executed by the defendants in favour of Ankush (son of plaintiff no. 1) for an amount of Rs. 4000/- for the sale of the suit property. This agreement is signed by plaintiff no. 1 on behalf of Ankush. This agreement records that an amount of Rs. 2200/- is paid by plaintiff no. 1.
- d) 26th October 1977: Regular Civil Suit No. 110 of 1974 decreed, and for the recovery of the decretal amount, the present suit property was attached.
- e) 20th September 1978: Plaintiff no. 1 paid an amount of Rs. 1000/- to defendant no. 1 (receipt at Exhibit 41).

- f) 23rd March 1979: Plaintiff no. 1 paid an amount of Rs. 700/- to defendant no. 1 (receipt at exhibit 42).
- g) 2nd November 1979: Ankush died.
- h) 1st March 1980: Legal notice issued by the plaintiffs for performance of the suit agreement.
- i) 27th March 1980: Present suit for specific performance filed.
- j) 29th April 1983: Plaintiff no. 1 filed Regular Civil Suit No. 116 of 1983 against defendant no. 1 and one, Dadasaheb Bhausahab Jagtap, for an injunction in respect of the present suit property, i.e. Gat No. 497 and another land bearing Gat No. 1094. In this suit, plaintiff no. 1 pleaded about advancing the loan amount to defendant no. 1. He also pleaded that possession of the present suit property was handed over to him on 18th February 1981. This suit was dismissed.
- k) 28th September 1987: Present suit dismissed.

l) 5th December 1987: Appeal filed in the district court to challenge the dismissal of the present suit.

m) 10th August 1988: Regular Civil Suit No. 232 of 1975 was decreed.

25. The trial court has discussed these sequences of events that occurred up to the decision of the suit and the pleadings and decisions in the other suits to determine the nature of the suit agreement. The first appellate court has emphasised the registration of the suit agreement to accept it as an agreement for sale. However, in my opinion, if the suit agreement is viewed in conjunction with the other transactions between plaintiff no. 1 and defendant no. 1, as discussed above, it is difficult to accept the suit agreement independently of these other transactions. Hence, the reasons recorded by the first appellate court to reverse the trial court's findings on the nature of the suit agreement are not based on a correct appreciation of the pleadings and evidence on record. Hence, the third question of law is accordingly answered in favour of the appellant by holding that the suit agreement has to be viewed in conjunction with

and in the context of several money lending transactions between plaintiff no. 1 and defendant no. 1. Thus, the suit agreement does not appear to be an agreement independent of the other money lending transactions and was not an agreement with an intention to execute an agreement for sale of the suit property. However, it was an agreement to secure the loan amount advanced by plaintiff no. 1 to defendant no. 1, as correctly held by the trial court.

26. The first appellate court framed points for determination on whether the suit agreement was sham and hollow without any consideration, and whether the intention was to execute an agreement for sale or the suit agreement was executed towards the security of the loan. The first appellate court also framed a point for determination regarding readiness and willingness, as well as whether the plaintiffs were entitled to a decree for specific performance or the return of the earnest money. The first appellate court emphasised the controversy as to whether the suit agreement was an agreement for sale or whether it was executed as a security towards the loan advanced by plaintiff no. 1 to defendant no. 1.

27. As discussed above, the first appellate court accepted the suit agreement as an agreement for the sale of the suit property. However, while granting a decree for specific performance, the first appellate court did not consider whether the plaintiffs were entitled to the discretionary relief as contemplated under Section 20 of the Specific Relief Act, although it accepted that the suit property was ancestral joint family property. In my opinion, it was necessary for the first appellate court to determine whether the plaintiffs would be entitled to a decree for specific performance of the contract, which was not signed by the other co-sharers. Defendant no. 2 is the wife of defendant no. 1. Although she signed the suit agreement, she is not a co-sharer or a co-owner of the suit property.

28. Once it is not in dispute that the suit property is an ancestral joint family property; it was necessary for the first appellate court to examine whether in the absence of, consent of the other co-sharers and in the absence of any theory pleaded and proved that the defendants were authorised to enter into the transaction on behalf of all the co-sharers the discretion as contemplated under Section 20

of the Specific Relief Act could be exercised in favour of the plaintiffs. Hence, the first appellate court was required to frame a proper point for determination, as to whether the plaintiffs were entitled to the discretionary relief of specific performance as contemplated under Section 20 of the Specific Relief Act. Although the plaintiffs pleaded that the suit agreement was executed for legal necessity to repay joint family debts and for the education of the children, they failed to prove that the suit agreement was executed for the legal necessity of the joint family. The evidence relied upon by the plaintiffs is with reference to only the loan transactions between plaintiff no. 1 and defendant no. 1. There is no material produced on record with reference to any joint family debts. It is a well-established legal principle that the burden to prove that the transaction is entered into for the legal necessity of the joint family is on the purchaser.

29. The first appellate court neither framed any point for determination nor examined whether the discretionary jurisdiction under Section 20 of the Specific Relief Act could be exercised in the facts of the present case. Thus, merely accepting the suit agreement as an indication of the parties'

intention to enter into a contract for the sale of the suit property would not be sufficient to grant a decree for specific performance. Therefore, the decree for specific performance would stand vitiated for want of determination of the point as to whether, in the facts of the present case, the plaintiffs would be entitled to a decree for specific performance of the contract for sale of an ancestral joint family property. Hence, the first two questions of law are answered accordingly in favour of the appellants.

30. Learned counsel for the appellants relied upon the decisions of the Hon'ble Apex Court in the cases of *Vidyadhar* and *Man Kaur*. In the decision of *Vidyadhar*, the Hon'ble Apex Court held that where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined, a presumption would arise that the case set up by him is not correct. This legal principle, as established in the decision of *Vidyadhar*, is relied upon in the case of *Man Kaur*. In the case of *Man Kaur*, the Hon'ble Apex Court summarised the legal position as to who should give evidence regarding matters involving personal knowledge. It is held that if the

power of attorney holder has done any act or handled any transactions in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. It is thus held that if the power of attorney holder alone has personal knowledge of such acts and transactions and not the principal, the power of attorney holder shall be examined if those acts and transactions have to be proved.

31. In the present case, plaintiff no. 1, who signed the agreement on behalf of Ankush, in whose favour the agreement was executed, failed to enter the witness box. All the payments are alleged to have been made by plaintiff no. 1 in furtherance of the suit agreement. However, plaintiff no. 1 failed to enter the witness box and offer himself for cross-examination. Hence, plaintiff no. 1 not entering into the witness box is a relevant factor for deciding the nature of the transaction. Plaintiff no. 1's son, who was examined based on the power of attorney executed by plaintiff no. 1, cannot be accepted as sufficient evidence to support the plaintiffs' contentions regarding the nature of the suit agreement.

32. The Hon'ble Apex Court, in the case of **Santosh Hazari** held in paragraph 15 as under:

“Secondly while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one”.

33. This court, in the decision of **Sunil**, while dealing with a prayer for specific performance of an oral agreement, followed the legal principles settled in the decision of

Santosh Hazari and held that the first appellate court could not have given benefit of weaknesses of the defendant to the plaintiff by ignoring that no cogent and clear evidence was brought on record by the plaintiff to establish the oral agreement. Thus, it was held that the reversal of the trial court's decree based on the weaknesses of the defendant was not permissible. In the present case, the first appellate court completely ignored that plaintiff no. 1 failed to enter the witness box and offer himself for cross-examination. The oral evidence of plaintiff no.1 would have been relevant as it was the plaintiffs' case that plaintiff no. 1 had signed the agreement on behalf of Ankush, and the payments towards the consideration for sale were also made by plaintiff no. 1. Thus, the findings recorded by the first appellate court to reverse the trial court's findings on the nature of the suit agreement would not be sustainable. Thus, the legal principles settled in the decision of ***Santosh Hazari*** and ***Sunil*** would squarely apply to the arguments made on behalf of the appellants.

34. The Hon'ble Apex Court in the case of ***Satish Kumar*** relied upon the legal principles settled in the decision of

*Parakunnan Veetil Joseph's Son Mathew Vs Nedumbara Kuruvila*⁸ and held that specific performance cannot be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. It is further held that the discretion of the court will not be there, even though the contract is otherwise valid and enforceable. The relevant paragraph 14 of the decision in the case of *Parakunnan Veetill Joseph's Son Mathew*, reads as under:

“14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruvila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the agreement for sale Exhibit A-1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that

8 AIR 1987 SC 2328

agreement. He is, therefore, not entitled to a decree for specific performance.”

emphasis applied by me

35. The Hon’ble Apex Court, in the decision of ***A. C. Arulappan***, relied upon the legal principles settled in the decision of ***Parakunnam Veetil Joseph's Son Mathew*** and held that the granting of specific performance is an equitable relief, and the same is governed by the salutary provisions of the Specific Relief Act. It is held that these equitable principles are nicely incorporated in Section 20 of the Act, and while granting a decree for specific performance, these guidelines shall be at the forefront of the mind of the court. In view of these legal principles, the Hon’ble Apex Court reversed the decree for specific performance by holding that the plaintiff had been trying to take an unfair advantage over the defendant and that the circumstances in which the agreement was executed made it highly probable that the defendant might not have readily agreed to this contract. The Hon’ble Apex Court noted the facts of the case where the defendant was to retire from service and did not have funds to purchase another house, and thus, to move to a small

house elsewhere, and with a view to discharging some debts, the agreement was executed. However, the defendant was not keeping good health and voluntarily retired from service. Thus, in these facts, the defendant's contention was accepted regarding the dispute over the consideration amount and the failure to obtain the requisite permission under the Urban Land Ceiling Act, as well as the Income Tax clearance certificate. Thus, although the execution of the agreement was excepted, the decree for specific performance was refused.

36. This court, in the decision of *Krishnaji Vinayak Belapurkar*, was dealing with an argument that by virtue of the compromise, during the pendency of the suit, there was a transfer of property in favour of the plaintiff by one of the defendants, which was invalid under Section 52 of the Transfer of Property Act. This court, in the facts of the case, held that the compromise partially recognised the title of the plaintiff to institute the suit for redemption. Hence, assuming that the compromise effected a transfer of property, it would not in any way affect the right of the defendants-mortgagees, and the defendant who compromised with the plaintiff was

made a plaintiff, and if any amount had been decreed as due on account of the mortgage, both the plaintiffs and the transposed defendant would have been bound to pay that amount. Thus, the rights established by the compromise between the plaintiff and one of the defendants would in any event have been subservient to the rights of the defendants-mortgagees, and would not, in any way, have affected their right to recover the money on the mortgage. Therefore, it was held that Section 52 of the Transfer of Property Act would not apply to the facts of the case.

37. Thus, the legal principles settled in the decisions discussed above and relevant for deciding the questions of law in the present case are summarised as below:

- a) Merely accepting the suit agreement as an indication of the parties' intention to enter into a contract for the sale of the suit property would not be sufficient to grant a decree for specific performance. Before granting a decree for specific performance of a contract, it is necessary to examine whether it is lawful to do so in

the exercise of the discretionary jurisdiction under Section 20 of the Specific Relief Act.

- b) Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined, a presumption would arise that the case set up by him is not correct. If the power of attorney holder has done any act or handled any transactions in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the power of attorney holder alone has personal knowledge of such acts and transactions and not the principal, the power of attorney holder shall be examined if those acts and transactions have to be proved.
- c) While reversing a finding of fact, the first appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding.
- d) Specific performance cannot be ordered if the contract itself is cancelled or becomes unenforceable. The court

is not bound to grant specific performance merely because it is lawful to do so. The grant of specific performance is an equitable relief, and while granting a decree for specific performance, the guidelines under Section 20 of the Specific Relief Act 1963 must be followed.

- e) The principles of Section 52 of the Transfer of Property Act would not apply if a party entitled to seek specific performance of a contract relinquishes that right during the pendency of the suit or appeal, which would not affect the rights of any other party thereto under any decree or order which may be made therein.

38. In the present case, the additional substantial questions of law are framed with reference to the subsequent event of executing the cancellation document produced on record at Exhibit X1. Admittedly, the suit agreement was executed in the name of the deceased, Ankush. The plaintiffs filed the suit for specific performance on the grounds that they, being the heirs and legal representatives of the deceased Ankush, were entitled to seek specific

performance. Plaintiff no. 1 is the father of the deceased, Ankush. Plaintiff no. 2 is the widow of deceased Ankush, and plaintiff nos. 3 to 5 are the children of deceased Ankush and plaintiff no. 2. Plaintiff nos. 2 to 4, executed and registered a deed of cancellation of the suit agreement on 23rd January 2020. Hence, the document of cancellation is brought on record by way of additional evidence and is admitted in evidence and marked as Exhibit X1, vide Order dated 27th March 2025. Respondent no. 2(plaintiff no. 2), i.e. the widow of Ankush, expired during the pendency of the second appeal. The children of respondent no. 2 and deceased Ankush are already on record in different capacity as respondent nos. 3 and 4, hence the name of respondent no. 2 was deleted. The name of respondent no. 5 was deleted as he died, unmarried and issueless.

39. The impugned decree grants specific performance of the contract executed in favour of Ankush. The suit for specific performance was filed by plaintiff no. 1, i.e. father of Ankush, plaintiff no.2, i.e. widow of Ankush and plaintiff nos. 3 to 5, i.e. children of Ankush and plaintiff no. 2. By the impugned decree, the respondents (all the plaintiffs) are held

entitled to get the sale deed executed in their favour in terms of the contract that was executed by Ankush. Respondent nos. 2 to 5 are the Class-I heirs of deceased Ankush. However, they executed a registered document and cancelled the suit agreement. It is pertinent to note that the mother of Ankush never asked for specific performance of the contract in her favour on the ground that she, being the heir of Ankush, was entitled to seek specific performance. Though plaintiff no. 1, i.e., the father of Ankush, asked for specific performance, he was not a Class-I heir of the deceased Ankush. Hence, I do not find any substance in the arguments made on behalf of respondent nos. 1A to 1F, that the mother of Ankush and the widow of plaintiff no. 1, who is brought on record as one of the heirs of plaintiff no. 1 (deceased respondent no.1), would be entitled to seek specific performance as she would inherit the interest as the mother of deceased Ankush.

40. None of the respondents filed any affidavit denying the execution of the cancellation document. In the reply filed by respondent nos. 1A to 1F, they contended that the cancellation is by playing fraud and not binding upon them.

The allegation of fraud is not supported by any material pleadings. Hence, by a reasoned order dated 27th March 2025, this court admitted the cancellation document in evidence and marked it as Exhibit X1. Respondent nos. 3 and 4 are represented through a separate advocate. However, nothing is argued, raising any objection to the cancellation document. Thus, except for plaintiff no. 1, the rest of the plaintiffs have cancelled the suit agreement. Thus, the additional substantial questions of Law are required to be determined only with reference to the plaintiff no. 1's right to seek specific performance of the suit agreement.

41. It is argued on behalf of the heirs and legal representatives of deceased plaintiff no. 1 that the cancellation document at Exhibit X1 is hit by the principles of Section 52 of the Transfer of Property Act. It is argued that during the pendency of this appeal, the suit property cannot be transferred or otherwise dealt with by any party, so as to affect the rights of any other party, thereto under any decree or order, which may be made therein without leave of the court. The learned counsel for respondent nos. 1A to 1F submitted that the decree for specific performance is in

favour of all the plaintiffs. Hence, respondent nos. 2 to 5 (plaintiff nos. 2 to 5) were not entitled to execute a deed of cancellation of the suit agreement without the consent of respondent no. 1 and without seeking leave of the court. Hence, it is argued on behalf of these respondents that the deed of cancellation produced at Exhibit X1 should be disregarded.

42. Admittedly, the suit agreement was in the name of the deceased Ankush. The plaintiffs sought specific performance on the ground that they were heirs of the deceased, Ankush. Respondent nos. 2 to 5 are Class-I heirs of deceased Ankush. Plaintiff no. 1, being the father of deceased Ankush, is a Class-II heir. Hence, plaintiff no.1 would not be entitled to seek specific performance on the ground that he is the heir of deceased Ankush. The decree for specific performance is granted in favour of all the plaintiffs because plaintiff nos. 2 to 5 (respondent nos. 2 to 5), along with plaintiff no. 1 (respondent no. 1) made a prayer for specific performance of the contract.

43. During the pendency of this second appeal, Respondent nos. 2, 3 and 4 have chosen to resolve the

dispute and cancelled the suit agreement by executing a valid deed of cancellation. The deed of cancellation is not denied by respondent no. 1. Plaintiff nos. 2 to 4, the Class-I heirs of deceased Ankush, have relinquished their right to seek specific performance of the contract by executing the deed of cancellation. Hence, plaintiff, no. 1, would not be entitled to specific performance of the contract in his individual capacity. The execution of the deed of cancellation, therefore, cannot be held to affect the rights of respondent no. 1 in the suit property.

44. Thus, the legal principles settled in the decision of *Krishnaji Vinayak Belapurkar* support the arguments made on behalf of the appellants. Hence, the document at Exhibit X1 would not be hit by the principles of Section 52 of The Transfer of Property Act 1882. By executing the document at Exhibit X1, respondent nos. 2 to 5 have relinquished their right to seek specific performance of the agreement executed in favour of deceased Ankush. Therefore, in view of the cancellation of the suit agreement by the Class-I heirs of Ankush, the decree for specific performance would not be sustainable only in favour of respondent no. 1, i.e. the father

of deceased Ankush. Plaintiff no. 1 has not pleaded and proved that he is entitled to seek specific performance of the suit agreement in his individual capacity. Thus, in view of the cancellation deed at Exhibit XI, the suit agreement would not be enforceable. Hence, the impugned decree would not survive. Hence, all the additional substantial questions of law are answered in favour of the appellants.

45. I have already recorded reasons to hold that the impugned decree for specific performance is not sustainable in law by answering all the first three questions of law in favour of the appellants.

46. Hence, for the reasons recorded above, the second appeal is allowed by passing the following order;

a) The impugned judgment and decree dated 24th August 1993, passed by the learned IVth Additional District Judge, Satara, in Regular Civil Appeal No. 618 of 1987, is quashed and set aside. Regular Civil Appeal No. 618 of 1987 is dismissed.

b) The judgment and decree dated 28th September 1987, passed by the learned Civil Judge, Junior

Division, Wai, in Regular Civil Suit No. 103 of 1980,
is confirmed.

c) The Regular Civil Suit No. 103 of 1980 is
dismissed.

d) A decree be drawn up accordingly.

e) There will be no order as to costs.

(GAURI GODSE, J.)