



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
SECOND APPEAL NO. 425 OF 2003

Waman Narayan Bhave (deceased)

Through his Legal Heirs

1(a) Meghna Shirish Bhave

Age: 53 years, Occ. Housewife

1(b) Yash Shirish Bhave

Age : 22 years, Occ.Civil Engineer

1(a) & 1(b) both are residing at

Pragati Bungalow, Meenatai Thakare

Nagar, Wada, Taluka Wada

Dist. Palghar

.... Appellants

Versus

Dev Bappa Co-operative Housing Society Ltd.

Through its Chairman Shri Sudhakar Jagannath

Hazare, having its registered office at

Dev Bappa Co-operative Housing

Society, Kharkarali, Thane

.... Respondent

Mr. Pramod J. Pawar for the Appellants.

Mr. Rupesh Sohoni for the Respondent.

**CORAM : GAURI GODSE, J.**

**RESERVED ON: 29<sup>th</sup> JANUARY 2026**

**PRONOUNCED ON: 8<sup>th</sup> JUNE 2026**

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**JUDGMENT:**

**BASIC FACTS:**

1. This second appeal is preferred by the original defendant to challenge the concurrent judgments and decrees passed by the first appellate court decreeing the suit granting specific performance of a plot of land in favour of the plaintiff-society. The defendant died during the pendency of the second appeal, and his heirs and legal representatives have been brought on record. The trial court decreed the suit, granting a declaration that the society is the owner of the plot of land and further directed the defendant, i.e. the owner of the land, to execute a conveyance deed in favour of the plaintiff-society and its members. The trial court's decree directing execution of the conveyance is in respect of a plot of land on which the building of the plaintiff society is constructed. The appeal preferred by the defendant to challenge the trial court's decree is dismissed.
2. The second appeal was admitted on 20<sup>th</sup> June 2003 on the substantial questions of law framed in grounds 1 and 3 which read as under :

*“1. The learned District Judge erred in granting decree for specific performance of the agreement of sale of the land whereas the suit is filed for the relief of declaration that the respondent have become the owners of the property bearing Tikka No. 5, C.T.S. No. 67-P and 68-P, situated at Kharkarali, Thane.*

*3. The learned District Judge failed to appreciate that the suit simplicitor for declaration which has been filed in the present case by the respondent-plaintiff does not lie as per the provisions of Section 34 of Specific Relief Act.”*

3. The society filed a suit solely for a declaration that the society is the owner of the plot of land admeasuring 1166 square yards out of the land bearing Tikka No. 5, City Survey Nos. 67 (part) and 68 (part) along with the building structures, standing thereon. The defendant is the owner of the said plot. The plaintiff society relied upon a photocopy of one of the agreements executed in favour of a member of the society in respect of one of the flats in the building constructed on the said plot. The Society had relied upon an agreement dated 20<sup>th</sup> January 1977 to contend that the deceased appellant had agreed to sell the land in favour of the Society.

4. The defendant denied the plaintiff-society's claim on the ground that, in the absence of any title, the plaintiff-society would not be entitled to seek a declaration of ownership of the land based on the agreements executed in favour of the individual members in respect of their individual flats. The defendant denied the suit claim for a declaration of ownership. The defendant denied execution of any agreement in favour of the society to convey the building. He contended that it was agreed to sell the land subject to the agreements to sell the flats to the members; however, most of the members of the society had failed to perform their part and did not make payments towards their respective flats; hence, there was no question of conveying any title in the land or the building.

5. The trial court decreed the suit by holding that, based on the agreements executed in favour of the members of the plaintiff society under the provisions of The Maharashtra Ownership Flats Act, 1963 ("MOFA"), the society was entitled to a conveyance document in respect of the plot of land on which the building was constructed. Based on the agreements executed in favour of the members, the trial court held that the

plaintiff proved its ownership of the land. Thus, the trial court accepted the plaintiff society's ownership of the land and granted a declaration that the society was the owner of the land and also directed the defendant, i.e. the owner of the land, to execute a conveyance in favour of the society and its members in respect of the land along with the building standing thereon. The society had filed an application to amend the plaint to seek a prayer for conveyance; however, the said application was rejected.

6. The first appellate court confirmed the trial court's findings on the ground that the society would be entitled to a decree of conveyance as the agreements were executed by the defendant in favour of the members under the provisions of MOFA. In the appeal before the District Court, the society had again filed an application to amend the plaint to add the prayer for conveyance. The said application was allowed. The deceased appellant had challenged the said order in this court by filing Civil Revision Application No. 1022 of 200. Thereafter, the society applied in the said revision application for leave to withdraw the application for amendment. In view of the

withdrawal of the application, the civil revision application filed by the deceased appellant was disposed of on 11<sup>th</sup> July 2001.

7. The society had filed a separate suit, being Special Civil Suit No. 8 of 1981, against the defendant for recovery of Rs.1,99,570/-. The said suit was partly decreed, and the deceased appellant was directed to pay Rs. 93,316/- with interest to the society. Civil Appeal No. 252 of 2000 was filed to challenge the decree passed in the said suit. Both appeals were decided by the district court by a common judgment. Civil Appeal No. 252 of 2000 is allowed, and the suit for recovery of amount filed by the society is dismissed for want of any cogent evidence to prove the claim for recovery on the ground that the society had spent the amount in completing the construction. Nothing has been shown before this court that the said dismissal of the suit was further challenged by the society.

**SUBMISSIONS ON BEHALF OF THE APPELLANTS:**

8. Learned counsel for the appellants submits that, admittedly, there is no title document in favour of the plaintiff in respect of the plot of land. Even according to the society, the document produced at Exhibit-35 is an agreement to sell the

land in favour of the society. However, the society never prayed for specific performance of the contract. Thus, in the absence of any title document, the society was not entitled to any declaration of title. Since there was no prayer for specific performance of the contract, there was no question of granting a decree for specific performance to convey the title of the land in favour of the society. He further submits that there is no dispute regarding the defendant's title to the suit property, i.e. the plot of land. Though individual agreements are executed in respect of the flats occupied by the members of the society, even if the said documents are accepted as documents under the provisions of MOFA, the said agreements would not confer any title to the society over the suit land. In the absence of any pleadings and proof that the terms and conditions of the agreement in respect of the individual flats have been complied with and that the payments have been made, the title to the flats would also not stand transferred in favour of the members. Consequently, there would also be no question of transferring ownership of the building in favour of the society.

9. In the absence of any prayer for specific performance and

conveyance, both courts erred in granting a decree for specific performance by referring to and relying upon the provisions of MOFA. Hence, both the questions of law must be answered in favour of the appellants, and the impugned judgments and decrees must be set aside.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT:**

10. Learned counsel for the society supported the impugned judgments and decrees. He submitted that the document at Exhibit-38 was one of the agreements executed in favour of the members of the society. Similar agreements under the provisions of MOFA were executed in favour of all the members of the society. Hence, in view of Section 4A of MOFA, the society has the right to have the title to the land conveyed in its favour. The document at Exhibit-35 was an agreement executed by the defendant in favour of the society, conveying title to the society. However, the defendant failed to complete the contract, although the society had paid Rs. 93,316/- to complete the construction. Hence, based on the individual agreements in favour of the members of the society, both the courts have rightly directed the defendant to execute conveyance in favour

of the society in view of the provisions of MOFA. There is no dispute that society has paid the cost of constructing the building. Hence, in view of the agreement in favour of the society and in view of the individual agreements in favour of the members, the plaintiff-society is entitled to get the title of the land conveyed in favour of the society.

11. Learned counsel for the society submits that sufficient evidence was produced on record to show that the defendant could not complete the construction of the building; hence, the society was required to complete construction at its own cost. Hence, in view of Section 34 of the Specific Relief Act, 1963, the society is entitled to a decree for conveyance of the title of the land. Since the members of the society are occupying their individual flats based on the individual agreements executed under MOFA, the plaintiff-society was formed by the members based on their individual agreements. Hence, the society is entitled to conveyance under the provisions of MOFA. The questions of law, therefore, would not arise in the second appeal. The impugned judgments and decrees for conveyance in favour of the society be therefore confirmed.

**ANALYSIS AND CONCLUSIONS:**

12. I have perused the impugned judgments, pleadings and evidence from the record and proceedings. The society filed the suit only with the following prayers :

*“(a) The Plaintiff’s suit against the defendant be decreed.*

*(b) It be declared that the plaintiff is the owner of the plot of land admeasuring 1166 sq. yards out of the land bearing Tikka No. 5, City Survey Nos. 67(P) 68(P) situate, lying and being at Kharkar Ali, Thane alongwith the building structures standing thereon.”*

13. A perusal of the entire plaint does not reveal any pleadings or cause of action to seek conveyance under the provisions of MOFA. The plaint is filed on the ground that the society is the owner of the land and therefore for the prayer that the society be declared as the owner of the land on which the building of the society has been constructed. The society relied upon an agreement dated 20<sup>th</sup> January 1997, executed between the Chief Promoter of the proposed society and the owner of the land. According to the plaint, the agreement was executed for a total consideration of Rs. 2,30,000/-. According to the society,

although the defendant received Rs.500/- at the time of execution of the agreement, he had no intention of completing the contract, and the agreement was executed only as a bogus agreement. Hence, the members of the proposed society ultimately completed its formation. Since the construction was left incomplete, the members completed the construction. Therefore, the society sought a declaration of the title to the land on which the building is constructed. Hence, the suit is solely for a declaration of ownership. The society contended that the defendant failed to hand over possession of the flats; therefore, the members took possession and occupied the flats. Hence, the society is the owner of the building and the land.

14. There is no dispute that the defendant is the owner of the land on which the society building is constructed. The members of the society claim rights in respect of the flats they occupy based on their respective unregistered documents. There is no pleading in the plaint for seeking conveyance in terms of the document executed under MOFA in favour of the members of the society. The trial court misinterpreted the document in respect of a flat in favour of one of the members, as a document

evidencing the society's entitlement to conveyance under the provisions of MOFA. The trial court has recorded findings in favour of the society by referring to the society's entitlement to conveyance under the provisions of MOFA, on the ground that the members are occupying their flats pursuant to agreements executed under MOFA.

15. Thus, in a suit for declaration of title, the trial court recorded findings regarding the society's entitlement to conveyance under the provisions of MOFA. The trial court first granted a declaration that the plaintiff-society is the owner of the plot of land. Simultaneously, the trial court ordered that the defendant, i.e., the owner of the land, must execute a conveyance deed in favour of the society and its members, by accepting the amount deposited by the plaintiff-society pursuant to the agreement executed by the defendant in favour of the proposed society.

16. The first appellate court has considered the provisions of MOFA and held that the defendant, i.e. the owner, was a contractor and promoter and, in the capacity of promoter, had executed various agreements in favour of the members of the

society. It is further held that the society had incurred the construction costs and thus completed the building. Thus, the first appellate court held that the defendant, i.e. the owner of the plot, was under the obligation to convey the land in favour of the society, as the flats in the building constructed by the society were occupied by the members based on the agreements executed by the defendant in their favour under the provisions of MOFA.

17. The reasons recorded by the first appellate court are entirely based on the society's entitlement to seek conveyance of the land under the provisions of MOFA. However, admittedly, no such prayer for conveyance under the provisions of MOFA was ever made by the society. Both courts have therefore erred in granting a decree for specific performance of the contract in the absence of any such prayer. There is neither any pleading nor prayer for seeking specific performance of any agreement in favour of the society.

18. It is held that the defendant is the promoter as defined under Section 2(c) of the MOFA; hence, though the relief of conveyance is not prayed, in view of the facts and evidence on

record and the legal principles regarding the statutory obligations under provisions of the MOFA, the society is entitled to the relief of conveyance. The discretion of the court as to the declaration of status or right is governed under the provisions of Section 34 of the Specific Relief Act, which reads as under:

*“ 34. Discretion of court as to declaration of status or right.- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

*Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.*

*Explanation.- A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.”*

19. It is pertinent to note that the society's application to amend the plaint to add a prayer for grant of conveyance was rejected by the trial court. In the appeal before the District Court, an application to amend the plaint was allowed to add a prayer for the grant of conveyance; however, the defendant challenged it before this court by filing a revision application. In the said revision application before this court, the society withdrew the application for amendment. The society has therefore abandoned its prayer to seek conveyance of the land along with the structure standing thereon. Once such a prayer is abandoned by society, the first appellate court could not have granted a decree for declaration of title and simultaneously also a decree for conveyance. Therefore, in view of the proviso to Section 34 of the Specific Relief Act, the discretion exercised by both courts in favour of the society is not sustainable.

20. The suit is solely for a declaration that the society is the owner of the land, on the ground that the members are occupying the building under their individual MOFA agreements. Hence, in a suit solely for a declaration of title, there was no question of granting any decree for specific performance. In the

absence of any valid title, the society is also not entitled to a decree declaring title in its favour. The findings recorded by both the courts are therefore perverse and beyond the pleadings and prayers in the suit. Both the questions of law, therefore, are answered in favour of the appellants.

21. Hence, the impugned judgments and decrees are not sustainable in law. Accordingly, the second appeal is allowed by passing the following order :

- (i) The Judgment and Decree dated 4<sup>th</sup> December 2002 passed by the II Additional District Judge, Thane, in Civil Appeal No. 299 of 1990 and the Judgment and Decree dated 31<sup>st</sup> August 1989 passed by the II<sup>nd</sup> Joint Civil Judge, S. D. Thane, in Regular Civil Suit No. 9 of 1981 are quashed and set aside. Civil Appeal No. 299 of 1990 is accordingly allowed.
- (ii) Regular Civil Suit No. 9 of 1981 is dismissed.
- (iii) There shall be no order as to costs.

**[GAURI GODSE, J.]**