

(2007) 04 BOM CK 0001

In the Bombay High Court

Case No : First Appeal No. 212 of 1992 and Cross Objection Stamp No. 15045 of 1992

Bhaskar Goma Bhole and Others

APPELLANT

Vs

Eknath Bhika Chaudhary and Another

RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 2
Specific Relief Act, 1963 — Section 20

Citation : (2007) 5 ALLMR 186 : (2008) 1 MhLj 607

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : S.C. Bora, for the Appellant; R.B. Raghuwanshi, holding for A.B. Girase, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—This appeal and cross objection arise out of Judgment and Decree rendered by learned Civil Judge (S.D.), Amalner, in Special Civil Suit No. 43 of 1989. The suit was for specific performance of agreement of sale or, alternatively, for refund of earnest amount along with damages. The trial Court rejected the main relief for specific performance but granted refund of Rs. 16,000/-i.e. the earnest amount along with interest " 12% per annum from the date of agreement till realisation of the entire amount.

2. Subject-matter of the dispute is Southern portion comprising of 2 hectares and 2- Ares area out of land bearing Gut No. 1613, admeasuring 4 hectares 66 Ares.

3. The suit land is within Municipal limits of the township of Chopda, a taluka place, and is undisputedly useful for non-agricultural purpose. It could be used for plotting so as to convert its use for residential purpose.

4. The plaintiffs case before the trial Court was that they and original defendant No. 2 - Vijaya agreed to purchase the suit land from the defendant No. 1 for consideration at the rate of Rs. 1,30,000/- per acre. The defendant No. 1 - Eknath executed an agreement of sale dated 22-12-1987 in their favour. It was agreed that Rs. 16,000/- would be paid as earnest money at the time of execution of the agreement, an amount of Rs. 1,00,000/- would be paid on or before 31-3-1988 and rest of the consideration would be paid at the time of execution of the registered sale deed. The parties agreed that the balance amount of consideration would be paid to defendant No. 1 on or before 31-3-1989 and he would execute the sale deed in their favour. It was also agreed that the defendant No. 1 will obtain necessary permission for conversion of the suit land to non-agricultural use and thereafter would transfer the same as would be directed by them. The defendant No. 1 accordingly executed a document, styled as "Soude-Chitthi" after receiving Rs. 16,000/- as earnest amount.

5. The plaintiffs' case further is that they were ready and willing to pay the balance amount of consideration. They offered amount of Rs. 1,00,000/- (Rs. One lac) to him on 31-3-1988 as per terms of the agreement. He avoided to accept that amount. They served a notice dated 10-3-1989 on him and called upon him to receive the remaining consideration and to comply with the terms of the agreement of sale. The notice drew blank. Nor it was replied by the defendant No. 1.

6. The plaintiffs alleged that the market price of the suit land escalated and, therefore, the defendant No. 1 avoided to execute the sale deed. Consequently, they sued for specific performance of the agreement of sale or alternatively, for refund of earnest amount along with compensation or damages to the tune of Rs. 3,00,000/-.

7. The defendant No. 1 resisted the suit mainly on the ground that the transaction was of money lending. He denied truth into all the material averments made by the plaintiffs. He contended that plaintiff No. 1-Bhaskar deals in money lending business without licence and had advanced amount of Rs. 8,000/- as hand loan to him. He further contended that the agreement of sale was obtained from him in lieu of security for repayment of the loan. He submitted that the plaintiffs have no right, whatsoever, to claim specific performance of the agreement in question because, there was no, mutual agreement for alienation of the suit land. His further submission was that the suit land is his ancestral property and he owns only 1/3rd share therein. He submitted that the suit is bad for non-joinder of necessary parties inasmuch as his sons and wife are the co-sharers of the suit land. He contended that the suit is false and hence, liable to be dismissed with costs.

8. Though original defendant No. 2 - Vijaya did not join the plaintiffs, yet she did not contest the suit. She was set ex parte.

9. On basis of above mentioned pleadings, the trial Court framed certain issues

at Exh. 21. The parties adduced oral and documentary evidence in support of their rival contentions. The trial Court held that the agreement of sale dated 22-12-1987 is duly proved by the plaintiffs/appellants. The trial Court also held that the plaintiffs were ready and willing to perform their part of the agreement of sale, The trial Court came to the conclusion that the decree for specific performance cannot be granted in favour of the plaintiffs because, the suit land was ancestral property held by the defendant No. 1 and, therefore, his sons and wife have a right to claim their shares. The trial Court further held that the agreement of sale (Exh.32) was not proved to be for legal necessity or for the benefit of the joint Hindu family of the defendant No. 1. That is why the trial Court was inclined to refuse decree for specific performance. Another reason assigned by the trial Court while refusing the decree for specific performance was that the plaintiff Nos. 1 to 6 and the defendant No. 2 have fallen apart and the readiness of all of them could not be inferred because, one of the purchaser i.e. the defendant No. 2 did not adduce any evidence regarding her willingness and readiness to perform her part of the agreement throughout the relevant period. Consequently, the trial Court partly decreed the suit only in respect of the relief for refund of the earnest amount along with the interest as indicated hereinbefore.

10. Feeling aggrieved, the plaintiffs have come up in appeal, whereas the defendant No. 1 has preferred the Cross objection. He reiterates that the transaction was that of money lending. He says that refund of only Rs. 8,000/- with minimal rate of interest " 6% per annum was just and proper.

11. The material points for determination are as follows:

- (i) Whether it is proved that the parties entered into an agreement of sale in respect of the suit land as alleged or it was a money lending transaction and loan of Rs. 8,000/- was advanced by way of loan to the defendant No. 1?
- (ii) Whether it is proved that the plaintiffs and defendant No. 2 were ready and willing, all along, to perform their part of agreement of sale in question?
- (iii) Whether the trial Court was right in refusing the main relief i.e. decree for specific performance of the agreement of sale?

For the reasons discussed hereinafter, my findings on the above points are thus:

- (i) In the affirmative, for first part. It was not money lending transaction.
- (ii) In the affirmative
- (iii) In the affirmative.

12. The plaintiffs have adduced oral evidence of four witnesses in support of their case. Out of them, PW-1 - Suresh is husband of plaintiff No. 3. He is a medical practitioner. It appears that he took leading role in the transaction. He claims to have been appointed as Special Power-of-Attorney by the plaintiff No. 3 Sulochana to look after the conduct of the suit. His version purports to show that

the defendant No. 1 - Eknath agreed to alienate the suit land in favour of the plaintiff Nos. 1 to 6 and defendant No. 2 for price of Rs. 1,30,000/- per acre. He deposed that he and PW-Yadav were present at the relevant time when the terms of the agreement were settled. He corroborated intrinsic evidence contained in the document styled as "Soude-Chitthi" (Exh. 32). He deposed further that an amount of Rs. 16,000/- was paid as earnest money to the defendant No. 1. His version purports to show that within one month from the date of agreement, he had approached defendant No. 1 - Eknath to pay Rs. 1,00,000/- (Rs. One lac), which the latter did not receive. His version further purports to show that defendant No. 1 Eknath then told that he would receive the said amount after consulting his relatives and Advocate. He makes an omnibus statement that the plaintiffs were ready to pay the remaining consideration amount to the defendant No. 1 and were ready to get the sale deed executed. He states that the demand notice (Exh. 28) was issued and served on the defendant No. 1, which the latter did not reply. His version purports to show that the prices of the lands have been doubled during the relevant period.

13. Cross-examination of PW-Suresh reveals that he does not know whether the suit land was previously owned by one Bhika Khushal Choudhari, who was father of the defendant No. 1. He admits that Smt. Narmadabai, who is mother of the defendant No. 1 was then alive. He could not describe how much land out of land Gut No. 1613 is reserved by the town planning Authority. He did not recollect whether crops were standing in the suit land as on the date of the agreement of sale. He admitted, however, that defendant No. 1 Eknath was to receive the usufructs of the suit land till completion of the transaction. In other words, actual possession of the suit land was not delivered to the plaintiffs and the defendant No. 2.

14. So far as the nature of transaction is concerned, PW-3 - Yadav does corroborate the plaintiff's case. His version reveals that the transaction took place in respect of sale of the suit land to PW - Dr. Borole, who represented plaintiff No. 1 - Bhaskar and plaintiff No. 3 Sulochana. He states that both the defendants and remaining plaintiffs were also present at the time of said transaction. He is an attesting witness of the agreement of sale (Exh.32). He claims that amount of Rs. 16,000/- was paid to the defendant No. 1 by PW-Dr. Suresh Borole as earnest amount.

15. The version of DW-1 - Eknath is to the effect that only amount of Rs. 8,000/- was received by him towards hand loan. He states that the plaintiff No. 1 gave the loan amount to him on his execution of the agreement of sale (Exh.32). He deposed that though only Rs. 8,000/- was the amount paid to him, yet in the agreement of sale, the amount of Rs. 16,000/- was shown to have been paid to him with a view to recover that amount at the time of repayment. His version reveals that his mother, sister and sons are also entitled to get share in the suit land. According to him, after receiving the demand notice (Exh.28), he met the

plaintiff No. 1 - Bhaskar who informed that the notice was given only with a view to get back the amount of loan with interest. So, he did not reply that notice. He thus tried to explain his conduct of keeping silence after receipt of the notice.

16. In support of his defence, he examined DW-2 Shankar, who is another attesting witness of the agreement of sale (Exh.32). The testimony of DW-Shankar is to the effect that defendant No. 1 - Eknath had objected execution of the agreement of sale and had requested that a hand loan receipt or cultivation receipt should be got executed but then one Suresh Badgujar told him that it was the way in which the plaintiff No. 1 - Bhaskar was dealing in the money lending business.

17. It is worthwhile to note that defendant No. 1 Eknath was well aware about terms of agreement of sale. He was working as High School Teacher since about 29 years at Chopda. He is not a gullible person. He would not have executed the document, styled as "Soude-Chitthi" (Exh. 32) in lieu of security for repayment of loan of Rs. 8,000/-. There is material variance between testimony of DW-Eknath and DW-Shankar regarding the so called money lending transaction. Conduct of DW-Eknath reveals that he did not immediately reply the demand notice (Exh.28). Any prudent person would have been put on alarm of the intentions of the plaintiffs after receipt of the demand notice (Exh. 28). The explanation given by the defendant No. 1 - Eknath, in this context, is quite lame and unacceptable. The plaintiff's evidence also would show that a public notice was issued and got published in a local newspaper (Exh. 50). The trial Court has rightly observed that the defendant No. 1 - Eknath could have availed gold loan facility of the Peoples' Urban Co-operative Bank at Chopda, of which he and his wife are shareholders from 1978-79. The trial Court has rightly observed that there was easy access available to the defendant No. 1 - Eknath to obtain loan from the School Teachers Co-operative Society (Patpedhi) instead of seeking such loan from the plaintiff No. 1 - Bhaskar. Indeed, there is no substance in the contention of the defendant No. 1 that the agreement of sale was executed by way of security for repayment of the loan. He failed to prove attending circumstances. There is no iota of evidence to show that plaintiff No. 1 - Bhaskar deals in money lending transaction. No other instances of money lending are brought on surface of the record. Needless to say, the finding of the trial Court that the defendant No. 1 failed to prove any loan transaction between himself and plaintiff No. 1 - Bhaskar is legal, proper and correct. Hence, I do not find substance in the cross-objection filed by him.

18. Clinching question is whether refusal of the discretionary relief of specific performance is proper. The order declining specific performance is discretionary and, therefore, should not be normally interfered with on appeal, unless the discretion is shown to be perverse or contrary to any well recognised principles or is unsustainable on the evidence. There cannot be duality of opinion that the discretion has to be exercised on well recognised principles based on sound judicial reasoning. The exercise of such discretion u/s 20 of the Specific Relief

Act, 1963, cannot be arbitrary, fanciful and irrational, though it cannot be subject of any straight jacket formula. Obviously, it is essential to find out whether the trial Court has committed perversity while exercising its discretion in declining the relief of specific performance.

19. There are certain circumstances, which cannot be overlooked. Cross-examination of PW-Suresh reveals that the defendant No. 1 was to obtain the usufructs. The plaintiffs contention that the possession was delivered to them is thus falsified. He states that he has no knowledge whether the suit land is in possession of the defendant No. 1 and the later never handed over its possession to the plaintiffs. This statement reveals conduct of PW-Suresh. It has come on the record that the defendant No. 1 did not apply for conversion of the suit land for non-agricultural use. Except bald version of PW-Suresh, there is nothing on record to show that amount of Rs. 1,00,000/- (Rs. One lac) was offered to defendant No. 1 as per terms of the agreement on 31-3-1988 or prior to that. He states that within one month, after the agreement, he had gone to defendant No. 1 along with amount of Rs. 1,00,000/- but, the later had not received the same. This part of his version appears to be farfetched.

20. Though it was agreed that defendant No. 1 Eknath shall hand over possession, yet this term was not followed nor the plaintiffs insisted to obtain the possession of the suit land. The demand notice (Exh. 28) would show that on 31-3-1988, the plaintiffs offered the amount of Rs. 1,00,000/- as per the contract but, the defendant No. 1 avoided to accept the same. Still, however, PW-Suresh gives different version. According to him, within one month, i.e. somewhere in January, 1988, he had approached the defendant No. 1 with the amount of Rs. 1,00,000/- (Rs. One lac) but, the latter refused to accept the same by saying that he would consult his Advocate. It appears that, in fact, no attempt was made to tender the said amount of Rs. 1,00,000/- on or before 31-3-1988.

21. Though the defendant No. 1 - Eknath asserted that his agreement, whether of sale or loan, whatsoever that may be, was with plaintiff No. 1 - Bhaskar, yet the plaintiff No. 1 - Bhaskar did not enter the witness box. No substantial reason is stated as to why no one from the plaintiffs entered the witness box. PW-Suresh states that he was appointed as power of attorney by the plaintiff No. 3 i.e. his wife as per Exhibit 31. This document of Power of Attorney (Exh. 31) would show that he was appointed only by plaintiff No. 3 to look after the litigation of Special Suit No. 43 of 1989. The recitals of the Special Power or Attorney do not show that he was appointed as power of attorney by the plaintiffs and defendant No. 2 to enter into the agreement of sale. Needless, to say, he is a stranger to the transaction. He appears to have subsequently participated in the litigation as power of attorney for and on behalf of the plaintiff No. 3 - Smt. Sulochanabai.

22. The plaintiffs and defendant No. 2 were the prospective purchasers. They entered into the alleged agreement of sale with defendant No. 1 - Eknath.

Obviously, either of them ought to have explained the terms of the agreement. There is variance between version of PW-Suresh and PW-Yadav regarding identity of the persons, who attended the talks of the agreement. The power of attorney appointed to look after conduct of the suit cannot be regarded as a witness of the transaction itself. It is aptly said that sometimes sand shines more than Sun.

23. In Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others, , the Apex Court held that the word "acts" employed in Order 3, Rules 1 and 2 of the CPC are confined only in respect of the acts done by him in exercise of power granted by the instrument. It is observed that the term "acts" would not include deposing in place and instead of the principal for acts done by principal and not by power-of-attorney holder. The relevant observations may be reproduced for ready reference.

The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

As stated before, PW-Suresh was not appointed as power of attorney to enter into the agreement of sale with defendant No. 1 - Eknath. It appears from the record that he took some part in the transaction as husband of the plaintiff No. 3. The plaintiff No. 3 is said to have contributed towards the earnest amount. She is self-employed and is dealing in business of furniture. The extracts of income tax assessment forms would not show that she was in possession of the required amount at the relevant time, so as to pay amount of Rs. 1,00,000/- on 31-3-1988.

24. The plaintiffs and defendant No. 2 were the joint prospective purchasers. There is no evidence on record to show contribution made by each of them and the manner in which each of them was ready and willing to perform his part of the agreement. The respondent No. 1 - Eknath was a school Teacher. The plaintiffs are not agriculturists. Their occupation is not shown in the plaint.

25. The plaintiffs are not agriculturists by profession. Nor the defendant No. 1 is exclusively an agriculturist. He was Teacher and agriculturist. The suit land is an agricultural land. It is not still converted for non-agricultural use. In view of Section 63 of the Bombay Tenancy and Agricultural Lands Act, such sale transaction in favour of non-agriculturists is impermissible. The legal prohibition would make the agreement of sale as unlawful agreement. Hence, the discretion cannot be used in the plaintiffs favour. It appears that the plaintiffs and defendant No. 2 - Vijaya desired to purchase the suit land for business purpose. Their investment is only Rs. 16,000/- (Rs. Sixteen thousand). They did not immediately deposit the remaining amount of consideration in the trial Court

after filing of the suit. The trial Court granted alternative relief regarding refund of the earnest amount along with interest " 12% p.a. So far as claim for compensation/damages is concerned, the plaintiffs have not explained as to how they sustained actual loss due to non-performance of the terms of the agreement of sale by the defendant No. 1 Eknath. There is only a sweeping and vague statement of PW-Suresh to the effect that the plaintiffs suffered loss amounting to Rs. 3,00,000/- because, the prices of lands during the period from the date of agreement till the date of execution of sale deed had been doubled. No other sale instances are produced on record to show that prices were doubled. The plaintiffs failed to make out a case so as to claim compensation/damages in addition to the interest amount awarded by the trial Court on the earnest amount. In any case, it does not stand to reason that with only investment of Rs. 16,000/- they would be entitled to compensation/damages of Rs. 3,00,000/- towards loss of so called profit due to escalation of the prices.

26. Mr. Bora, Learned Counsel appearing for the appellants would submit that reasoning of the trial Court, in support of its refusal to grant relief of specific performance, is erroneous. The trial Court held that the plaintiffs failed to prove presence of legal necessity and hence, the agreement was unenforceable. Mr. Bora seeks to rely on Jaywantabai Gajbhjiye Vs. Raghunath Lanjewar, . A Single Bench of this Court held that Karta of the family is entitled to alienate the joint property and question of legal necessity could arise only after the alienation is challenged. There appears no difficulty in accepting such contention of Mr. Bora. The trial Court committed error while refusing the relief for specific performance on the ground that legal necessity was not proved by the plaintiffs. It is nobody's case that the defendant No. 1 proposed to alienate the suit property in order to discharge any immoral debt. Nor the stage for proving existing of legal necessity had come into existence. The trial Court, could not have gone into such issue. It appears that the trial Court invented a new case in this behalf. The reasons recorded by the learned trial Court may not be proper, yet the refusal to grant such decree would be proper having regard to the fact that the plaintiffs failed to prove their case by adducing cogent evidence regarding their continuity of the joint willingness and readiness during the entire period to perform their part. For, none of the plaintiffs was examined. It need not be reiterated that PW-Suresh is not authorised to depose on behalf of the plaintiffs and the legal position mentioned earlier does not allow him to advance the cause of the plaintiffs from the witness box. Moreover, his version reveals that no enquiry was made as to how the defendant No. 1 - Eknath became owner of the suit property. The defendant No. 1's mother was alive at the relevant time and was not consulted before the transaction in question. She being one of the heir, left by deceased Bhika Choudhari, who was original owner of the suit land and father of defendant No. 1 - Eknath, it was necessary for the plaintiffs to make proper enquiry. In the context, observations in Balmukand Vs. Kamla Wati and Others, may be quoted thus:

Where adult members are in existence the judgment is to be not that of the

Manager of the family alone but that of all the adult members of the family, including the manager.

27. Mr. Bora seeks to rely on *Sushil Kumar and Anr Vs. Ram Prakash and Ors, and Subodhkumar and Ors. v. Bhagwant Namdeorao Mehetre and Ors.* 2007 (1) Supreme 838 and contended that question of legal necessity was not the issue involved. He contended that no such defence was raised by the defendant No. 1 and, therefore, the trial Court had applied wrong yardstick. I agree that incorrectly, the issue of legal necessity was considered by the trial Court although it had no relevance. That could not be the ground to refuse the relief of specific performance. Mr. Bora would also submit that in view of *P. D'Souza Vs. Shondrilo Naidu*, , the question of readiness and willingness of the plaintiffs would depend on whether the defendant No. 1 did everything, which was required of him to be done in terms of the agreement. He contended that the time was not the essence of the contract. He would, therefore, submit that the defendant No. 1 could have sought amount of Rs. 1,00,000/- immediately after service of the notice. He would submit that the defendant No. 1 unnecessarily avoided and protracted to perform his part of the agreement. Though it is true that the time was not the essence of the contract, yet the plaintiffs were bound to pay the amount of Rs. 1,00,000/- within the stipulated period on or before 31-3-1988. They introduced incorrect plea in paragraph 2(C) of the plaint that such amount was to be paid on 31-3-1988 or remaining amount of consideration was to be paid at the time of registration of the sale deed.

28. Mr. Raghuwanshi, learned Advocate appearing for the original defendant No. 1 - Eknath contended that the agreement itself is defective. He argued that it is not a valid and enforceable contract. He also submitted that the contract is not a concluded one. He referred to various authorities viz., *Mirahul Enterprises and Others Vs. Mrs. Vijaya Sirivastava and Mr. R.R. Sood*, , *Gostho Behari Sirkar Vs. Surs" Estates Ltd.*, , *Amrit Lal Suri Vs. C.P. Gupta*, , and *Ganesh Shet Vs. Dr. C.S.G.K. Setty and Others*, . These authorities are of no much help to the defendant No. 1 - Eknath. In the present case, there was a concluded contract between the parties. The trial Court has rightly held that execution of the agreement of sale is duly proved. The mere absence of some of the plaintiffs at the time of the agreement and absence of their signatures will not make the document as unconcluded contract. No such plea was raised in the trial Court. Hence, it is difficult to countenance such argument.

29. Mr. Raghuwanshi further seeks to rely on *Ouseph Varghese Vs. Joseph Aley and Others*, , *Bhikaram Nathuji Vanjari and Anr. v. Saraswatihai Motilal Zarkariya* 1996 (2) Mh.L.J. 756 and *His Holiness Acharya Swami Ganesh Dassji Vs. Shri Sita Ram Thapar*, . He argued that the readiness and willingness to perform the contract ought to be proved. He pointed out that there is only a statement in the pleadings to the effect that the plaintiffs are ready and willing to perform their part. The trial Court has rightly held that the plaintiffs proved the willingness and readiness to perform their part of the agreement. For, they issued the demand

notice (Exh.28), much before the outer limit of the prescribed period was to come to an end. They also filed the suit immediately after they gathered the knowledge that the defendant No. 1 -Eknath would not comply with the terms of the agreement. The suit was filed prior to the prescribed date stipulated in the agreement. Needless to say, the plaintiffs were prompt in seeking the specific performance. The time could not be essence of the contract since it was pertaining to the immovable property. Hence, reliance of Mr. Raghuwanshi on the aforesaid authorities, which deal with the question of readiness and willingness is rather misplaced. The facts of the present case are different from those cases referred by him.

30. Mr. Raghuwanshi would rely on certain observations in *Tejram Vs. Patirambhau, , Zama Punjaji Dhake and Ors. v. Rajaram Namdeo Patil and Ors.* 1993 MCR-102 and *M/s. P.R. Deb and Associates Vs. Sunanada Roy, .* I do not find it necessary to elaborately consider each of these authorities. As stated before, conduct of the plaintiffs is already considered herein. The plaintiffs failure to appear before the Court in person is one of the major reason as to why the discretionary relief may not be granted in their favour and so also, the fact that they did not express joint readiness and willingness is another aspect, which would go against them. Mr. Raghuwanshi also invited my attention to *Lonkaran Kishorilal Paliwal v. Bhaskar Ramgbau Ghive and Anr.* 1992 Mh.L.J. 1365. In that case, the Single Bench came to the conclusion that it was loan transaction and hence, decree for refund of the amount was passed. The facts of the given case are on different footings. In the present case, it is difficult to say that the defendant No. 1 - Eknath executed the agreement of sale in question on by way of security for repayment of the loan. Indeed, he failed to prove that it was loan transaction between himself and plaintiff No. 1 Bhaskar.

31. For the foregoing reasons, I have no hesitation in holding that the plaintiffs are not entitled to seek the relief of specific performance of the agreement. The discretion used by the trial Court in favour of the defendant No. 1 - Eknath is justified in the circumstances of the case. It cannot be said that such discretion is used against the settled norms unknown to the legal provisions, particularly u/s 20 of the Specific Relief Act. The main relief of specific performance is likely to cause undue hardship to defendant No. 1 - Eknath. In this view of the matter, the appeal as well the Cross Objection must fail.

In the result, the appeal and the Cross Objection are both dismissed. The parties to bear their own costs. Civil Applications, if any are disposed of.