
(2025) 11 BOM CK 1764

In the Bombay High Court

Case No : Civil Appellate Jurisdiction Second Appeal No. 344 Of 1992

Fakira Rambhau Shewale

APPELLANT

Vs

Vasant Narayan Rane

RESPONDENT

Date of Decision : 03-11-2025

Acts Referred:

Specific Relief Act, 1963 — Section 12(3), 22(1), 22(2)

Citation : (2025) 11 BOM CK 1764

Hon'ble Judges : Gauri Godse, J

Bench : Single Bench

Advocate : S.M. Gorwadkar, Sujay H. Gangal, Swaraj M. Savant, Rukmini Khairnar, Pramod Joshi

Final Decision : Allowed

Judgement

Gauri Godse, J

BRIEF FACTS:

1. This second appeal is preferred by the defendants to challenge the concurrent judgments and decrees passed for specific performance of the agreement to sell the suit property. The Trial Court decreed the suit, directing defendant no.1 (appellant no.1) to execute a sale deed in favour of respondent no. 1(plaintiff) and hand over possession of the suit property to the plaintiff. All the defendants challenged the Trial Court's decree by filing the first appeal in the district court. The first appeal is dismissed, and the Trial Court's judgment and decree is confirmed. The present respondents are the heirs and legal representatives of the deceased plaintiff.

2. The second appeal is admitted vide order dated 29th July 1992 on the questions of law framed in grounds (C), (F) and (G), which read as under:

“(1) Whether both the Courts were justified in decreeing the suit filed on the basis of oral agreement, when admittedly there was a written document about

the suit property, dated 31.12.1973, between the Plaintiff and the Defendant No.1, and the said Written document do not refer to earlier alleged oral agreement and therefore, earlier oral agreement if any was "novation"?

(2) Whether both the Courts were right in holding that even though, document dated 31.12.1973, stipulated 4 months period for completion of the transaction and that there was no provision for the extension of the period, "time was not essence of the contract" and that the Suit for specific performance filed in the year 1980 was within time?

(3) Whether both the Courts were justified in passing the decree for specific performance with respect to entire suit land, when Defendant No.1 alone had entered into the alleged suit transaction in which suit property is an ancestral joint Hindu Family property of all the Defendants and he could not have bound the shares of other coparcenors?

PLAINTIFF'S CASE:

3. It is the plaintiff's contention that in 1972, the suit property was encumbered, and the defendants were willing to sell the property to the plaintiff for Rs. 48001/-, although the valuation was only Rs. 20000/-. Accordingly, as per an oral agreement, the plaintiff paid Rs. 15000/- and possession was handed over to the plaintiff. Thereafter, the plaintiff paid Rs. 5000/-. Thus, the plaintiff paid a total of Rs. 20000/- before December 1973. Defendants recorded a statement before the Consolidation Officer in the proceedings initiated under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act 1947 ("the 1947 Act") regarding the sale agreement in favour of the plaintiff and thereafter entered into a written contract dated 31st December 1973 to sell the suit property to the plaintiff for a total consideration of Rs. 48,000/-. As per the written contract, out of the total consideration, a balance amount of Rs.33,001/- was to be paid within four months, and possession was to be handed over on execution of the sale deed. There was a discrepancy in the oral agreement and the written contract about the balance consideration amount and possession. However, given the cordial relations with the defendants and the plaintiff's possession, he accepted the terms and conditions of the written contract.

4. Thereafter, as requested by the defendants, the plaintiff on 24th May 1974, repaid the defendants' loan amount of Rs.4630/- and Rs.370/-. The defendants again requested to pay an amount of Rs.28,000/- for repayment of the loan; hence, the plaintiff paid an amount of Rs. 28,000/- on 1st July 1975, and the defendants issued a receipt. Thus, the plaintiff paid a total amount of Rs. 53,000/- to the defendants. As per the statement recorded before the consolidation officer on 8th

December 1973, the plaintiff's name was entered into the record of rights, and the possession continued with the plaintiff.

5. Since the plaintiff's possession was obstructed on 22nd June 1978, he filed a suit for an injunction. A temporary injunction granted by the trial court was reversed by the appellate court. Defendant no. 4 filed a suit for partition and separate possession. Thereafter, the plaintiff issued a notice dated 12th October 1979, calling upon the defendants to execute the sale deed. Since the defendants failed to perform their part of the contract, the suit for specific performance was filed.

DEFENDANT'S CASE:

6. Defendant no.1 and defendant nos.2 to 5 filed their respective written statements. Defendants denied the existence of an oral contract, receipt of part consideration, and the handing over of possession as per the oral contract. It was contended by defendant no.1 that the agreement for sale was executed on 31st December 1973 as per the terms and conditions recorded in the contract.

7. Defendant nos.2 to 5 filed their separate written statement and denied the suit claim. They contended that Regular Civil Suit No. 22 of 1979, filed by defendant no.4 for partition and separate possession, was pending. Defendant no. 1 had only 1/5th share in the suit property. They claimed to have an undivided share in the suit property. Hence, the contract, if any, signed by defendant no. 1 was not binding upon them.

FINDINGS BY BOTH COURTS:

8. The Trial Court accepted (i) the execution of the suit agreement dated 31st December 1973 for a total consideration of Rs.48,000/-, (ii) payment of Rs.15,000/- to defendant no.1 and delivery of possession to the plaintiff, (iii) payment of Rs. 5000/-, Rs. 4630/- and Rs. 370/- by the plaintiff towards clearance of the encumbrance on the suit property, and (iv) payment of Rs. 28000/-. Thus, it was held that the total payment of Rs. 53000/- by the plaintiff to the defendants was proved. The contention of defendant nos. 2 to 4 that the suit agreement would not be binding upon them as they had not signed it was not accepted. Hence, the Trial Court decreed the suit, directing defendant no. 1 to execute the sale deed and hand over possession.

9. The Trial Court's decree was challenged by filing an appeal in the District Court by all the defendants. The first Appellate Court confirmed the Trial Court's findings on

execution of the agreement, possession and payments. It was held that the agreement entered into by defendant no. 1 was for the legal necessity of the joint family. Hence, defendant no.1 was directed to execute the sale deed and also hand over possession to the plaintiff.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:

10. Learned senior counsel for the appellants submitted that the suit is filed for specific performance of an oral agreement, which is evident from paragraph 13

of the plaint. Hence, it was obligatory on the part of the plaintiff to prove the readiness and willingness of the oral agreement. However, both the Courts granted a decree for specific performance on the ground of readiness and willingness of the subsequent agreement dated 31st December 1973. Learned senior counsel for the appellants submitted that admittedly, the suit property was an ancestral property of defendant nos.1 to 4 and thus defendant no.1 alone had no authority to execute the agreement for sale without the consent of defendant nos.2 to 4. The plaintiff failed to prove that the agreement was executed for the legal necessity of the joint family. Hence, the suit for specific performance of the contract signed only by defendant no.1 could not have been granted.

11. As per the terms and conditions of the agreement dated 31st December 1973, four months time was provided for making payment of the balance consideration. Hence, the execution of the sale deed and the payment of the balance consideration amount on or before 30th April 1974 were the essence of the contract. The payment of Rs.33001/- was sought to be linked with the clearing of the Bank charge on the suit property. Hence, the burden was upon the plaintiff to prove that the payment of the balance consideration as agreed in the terms of the agreement was made within the stipulated time. Since the plaintiff failed to make payment of the balance consideration amount within the stipulated time, the plaintiff could not have been held as ready and willing to perform his part of the contract.

12. The suit filed after seven years shows that the plaintiff was never ready or willing to perform his part of the contract. In the suit for injunction, the plaintiff did not contend that payment of the balance consideration was made. On the contrary, a plea of payment of Rs . 25,000/- was contended to be made on 1st July 1975. Thus, the payment of the balance consideration amount as agreed in the suit agreement was not complied with. Therefore, according to the learned senior counsel for the appellants, it was incumbent upon the plaintiff to prove his continuous readiness and willingness to perform his part of the contract by making payment towards the balance consideration amount within the stipulated time. Hence, the first question of law must be answered in favour of the appellants by holding that the suit filed based on the agreement dated 31st December 1973 would amount to novation of the contract and thus, the readiness and willingness with reference to the oral agreement as prayed was not proved by the plaintiff.

13. Learned senior counsel for the appellants submitted that the plaintiff had questioned the receipt of the payment produced at Exhibit 51 by alleging that there was interpolation, which was shown as marked on the receipt. The plaintiff never pleaded regarding the payment of the consideration amount in the earlier suits. Hence, even if payments are accepted, they are not within the stipulated time of four months as per the agreement relied upon by the plaintiff. Learned senior counsel for the appellants further submitted that even the clauses in the agreement recorded that the suit property was an ancestral property. The

defendants also pleaded that all the defendants had a share in the suit property. Hence, when admittedly the suit property was an ancestral joint family property, defendant no.1 alone had no authority to execute any agreement in respect of the suit property. Hence, the agreement would not be binding upon the shares of defendant nos.2 to 4. Learned senior counsel for the appellants thus submitted that second and third questions of law also must be answered in favour of the appellants.

14. To support his submissions, learned senior counsel for the appellants relied upon the decision of the Apex Court in the case of Padmakumari and Others Versus Dasayyan and Others (2015) 8 Supreme Court Cases 695. By relying upon the legal principles in the aforesaid decision, learned senior counsel for the appellants submitted that when time is fixed for payment of the balance consideration amount, and there is a breach in compliance with the conditions, the issue of readiness and willingness cannot be accepted in favour of the plaintiff. He thus submitted that, in view of the well-settled legal principles on the issue of readiness and willingness, the plaintiff would not be entitled to the discretionary relief of specific performance.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

15. Learned counsel for the respondents submitted that defendant no.1 had examined himself and admitted that the suit property was his self-acquired property. She relied upon the relevant admissions in the cross-examination of defendant no.1. Both the Courts were justified in granting a decree for specific performance as even according to the defendants there was written document dated 31st December 1973 executed between the plaintiff and defendant no.1. Hence, when the written document refers to the earlier oral agreement, there cannot be any issue of novation of contract.

16. Learned counsel for the respondents submitted that the agreement clearly records payment of Rs . 15,000/- as an earnest amount taken for the purpose of clearing an encumbrance on the suit property. Thus, the time of four months provided for payment on the balance consideration amount was after the removal of encumbrances. Therefore, according to the learned counsel for the respondents, four months period stipulated in the agreement cannot be attributed to the plaintiff as the encumbrances were not cleared by defendant no. 1 as agreed.

17. Learned counsel for the respondents relied upon the relevant paragraphs of the Trial Court's judgment to support her submissions that the plaintiff had proved payment of Rs. 53,000/-. With reference to the cross-examination of the plaintiff on the receipt at Exhibit 51, she points out that the marked portion "B" would be irrelevant for not accepting the receipt at Exhibit 51 as proved. The evidence of the plaintiff is not shaken in the cross-examination. The plaintiff's witness, who is the attesting witness to the receipt at Exhibit 51, also supports the plaintiff's contention regarding payment of the consideration amount as

pleaded. The documents regarding payment of Rs . 4603/- and Rs . 370/- support the plaintiff's contention that the amounts were paid over and above the agreed amount to enable the defendants to clear the encumbrance on the suit property. She thus submits that the plaintiff also proved the payments towards clearing the encumbrances on the suit property, in addition to the payments towards the consideration amount.

18. With reference to the pleadings based on the agreement dated 31st December 1973, learned counsel for the respondents submits that there is no novation of the contract as the terms and conditions agreed between the parties are the same as orally agreed between the parties. The plaintiff was put in possession of the suit property; however, subsequently, the plaintiff's possession was obstructed when the temporary injunction earlier granted was vacated. She points out that, as per the agreed terms and conditions, except for the payment of the balance consideration amount, there was no performance of any terms to be complied with by the plaintiff. Hence, when the payments towards the agreed consideration amount, and in addition to the consideration amount, were proved by the plaintiff, there was no other proof necessary regarding the readiness and willingness of the plaintiff. She therefore submits that the four months period for payment of the balance consideration cannot be related to the plaintiff when the defendants failed to comply with their part of the contract by removing the encumbrances on the suit property.

19. To support her submissions, learned counsel for the respondents relied upon the decision of the Apex Court in the case of Gaddipati Divija and Another Versus Pathuri Samrajyam and Others 2023 SCC OnLine SC 442. Learned counsel for the respondents therefore submitted that all three questions of law must be answered in favour of the respondents.

SUBMISSIONS IN REJOINDER ON BEHALF OF THE APPELLANTS:

20. In response to the arguments made on behalf of the respondents, learned senior counsel for the appellants submitted that in 1978, when the suit was filed for an injunction, the plaintiff failed to plead payment of Rs. 28,000/- as contended in the present suit. He therefore submitted that the findings recorded by both the Courts in accepting the payment of Rs . 53,000/- by the plaintiff are based on an incorrect appreciation of the pleadings and evidence on record. He further points out that the District Court does not deal with the issue of possession. Hence, the findings recorded by the First Appellate Court would also amount to an incorrect appreciation of the pleadings and evidence on record. He thus submits that all three questions of law must be answered in favour of the appellants and the impugned decree for specific performance must be set aside.

ANALYSIS AND CONCLUSIONS:

21. I have perused the record of the second appeal. A perusal of the plaint indicates that the respondent(plaintiff) prayed for execution of the sale deed in favour of the plaintiff for a total consideration of Rs.48001/-. The plaintiff also

prayed for a decree for handing over possession, if necessary. The plaintiff contended that in 1972, the defendants were in need of money; hence, they agreed to sell the suit property for an amount of Rs . 48001/-. In 1972, the valuation of the suit property would not have been over Rs. 20000/-. The plaintiff accordingly paid an amount of Rs.15,000/ and possession was handed over to the plaintiff. The balance amount of Rs.33001/- was agreed to be paid at the time of execution of the sale deed. Since the parties were in cordial relations, the plaintiff relied upon the oral terms and conditions agreed between the parties and paid a further amount of Rs. 5,000/- during 1972-1973. Thereafter, an amount of Rs. 20,000/- was paid before the consolidation officer in the proceedings initiated under the Act of 1947.

22. It is further contended that after the amount of Rs. 20,000/- was paid in the consolidation proceedings on 8th December 1973, the parties agreed to enter into a written contract. Accordingly, an agreement was executed on 31st December 1973. However, when the defendants obstructed the plaintiff's possession, he was constrained to file Regular Civil Suit No. 78 to protect his possession. The Appellate Court vacated the temporary injunction granted in favour of the plaintiff on 22nd January 1979. Since the defendants thereafter refused to comply with the terms and conditions of the contract, the plaintiff was constrained to file the suit for specific performance.

23. Thus, as per the plaintiff's pleadings, the prayer for specific performance was based on an initial oral contract supported by the terms and conditions of the written contract dated 31st December 1973. Admittedly, the written contract is signed only by defendant no.1. The plaintiff does not plead the issue of legal necessity for the purpose of execution of the suit agreements. Defendant nos. 2 to 5 contend that the agreement was executed without their consent and the same would not bind their shares. Both the Courts concurrently accept the execution of the agreement. Considering the supporting evidence of the plaintiff and the attesting witness, both the Courts have rightly accepted execution of the receipt produced at Exhibit 51 regarding payment of Rs. 28,000/-. The portion marked 'B' in the receipt at Exhibit 51 is a statement that Rs. 28000/- is accepted. This statement is with reference to the assurance of defendant no. 1 that he shall clear the encumbrance. Considering the supporting evidence of the plaintiff and the attesting witness to the receipt, I do not see any reason to interfere with the concurrent findings of fact that the amount was paid by the plaintiff.

24. Thus, if the issue of readiness and willingness is to be considered with reference to the terms and conditions of the contract, the plaintiff had paid Rs. 15,000/- on 31st December 1973. The terms and conditions further provided that the balance amount of Rs.33,000/- was to be paid within four months of the contract. The plaintiff also proved payment of Rs. 5000/- and a further payment of Rs. 28,000/- as per the receipt produced at Exhibit 51. The two receipts produced at Exhibits 54 and 55 support the plaintiff's contention that the

amounts were paid towards the loan amount to the credit co-operative society to clear the encumbrance on the suit property. Thus, the findings recorded by both the Courts accepting a total payment of Rs. 53,000/- are supported by evidence. No fault can be found in the findings of fact recorded by both the Courts on the payment aspect.

25. So far as the first question of law is concerned, the terms and conditions of the written agreement are consistent with the oral agreement. Hence, there does not appear to be any novation of the contract. The plaint refers to the oral agreement, and that the written document was in continuation of the oral terms and conditions. Hence, the suit is filed for specific performance of the contract, which includes the oral agreement supported by the confirmation of executing a written document. Hence, the first question of law is answered by holding that there is no novation of contract, and the written document is in continuation and confirmation of the oral agreement.

26. The second question of law is with regard to the stipulated period of four months for completion of the transaction. The term regarding payment of the consideration amount within four months has to be read along with the obligation on the part of defendant no.1 to clear the encumbrance. The written contract at Exhibit 50 records that there are encumbrances on the suit property, and Rs. 15000/- is paid to defendant no. 1 for clearing the encumbrances. The obligation to clear the encumbrances was on defendant no. 1. Thus, in the absence of any evidence to show that defendant no. 1 cleared the encumbrances, the period of four months cannot be held against the plaintiff to hold that he did not comply with the payment clause in the written agreement dated 31st December 1973. The agreement records the receipt of Rs. 15000/-. The receipts at Exhibits 51, 54 and 55 support the plaintiff's contention that over and above the agreed amount of Rs. 48,001/-, the plaintiff had paid an additional amount and cleared the encumbrance on the suit property. Both courts have rightly held that the plaintiff proved payment of a total amount of Rs. 53000/-.

27. In the decision of Padmakumari, the Hon'ble Apex court relied upon the legal principles settled in the decision of Chand Rani Vs Kamal Rani (1993) 1 SCC 519, in which it is held that even where the parties have expressly provided that time is of the essence of the contract, such a stipulation will have to be read along with other provisions of the contract and such other provisions may on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental.

28. Learned senior counsel for the appellants also relied upon the decision of the Hon'ble Apex Court in the case of Desh Raj and others Vs Rohtash Singh AIR 2023 SC 163, to support his submissions that when the intention of the parties was clear that time would be the essence of the contract and there is delay to institute the suit, the relief of specific performance cannot be granted. The Hon'ble Apex Court referred to and relied upon the legal principles settled in the decision of K. S. Vidyanadam (1997) 3 SCC 1, in which it held that even if a suit

is filed within the period of limitation of three years, the time limits stipulated in the agreement cannot be ignored. It was thus held that when there is undue delay in instituting the suit, the relief of specific performance cannot be granted.

29. In the decision of Gaddipati Divija, relied upon by the learned counsel for the respondents, the Hon'ble Apex Court applied the legal principles settled in the decision of Chand Rani and held that when specific performance of the terms of the contract has not been done, the question of time being the essence would not arise. Thus, the legal principles applicable to the facts of the present case are summarised as under:

(a) When the terms and conditions of the written agreement are consistent with and in continuation of the oral terms and conditions of the oral agreement, there cannot be any novation of the contract.

(b) Even where the parties expressly provide that time is the essence of the contract, such a stipulation will have to be read along with other provisions of the contract, and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental.

(c) When the intention of the parties is clear, that time would be the essence of the contract, and if there is an undue delay in instituting the suit, the relief of specific performance cannot be granted. But when the terms of the contract provide for reciprocal obligations and the specific performance of those terms has not been carried out, the question of time being the essence would not arise.

(d) When the purchaser proves that the entire consideration has been paid and that the purchaser is under no obligation to perform any other term, specific performance cannot be refused on the ground of readiness and willingness by reference to the stipulated time period in the contract, which also provides for reciprocal obligations to be performed by the vendor.

30. In the facts of the present case, the time period of four months for payment of the balance consideration amount will have to be read along with the obligation on the part of defendant no. 1 to remove the encumbrances. Even otherwise, both courts have rightly held that over and above the agreed total consideration amount, the plaintiff has proved payments towards the removal of encumbrance and an additional amount for the removal of the encumbrances. Hence, nothing more was to be performed by the plaintiff. In the absence of any proof that defendant no. 1 removed the encumbrances, specific performance cannot be denied on the ground that time was the essence of the contract for payment of the balance consideration amount, and it was not performed within the agreed time. Nothing is argued on the steps taken by defendant no. 1 to clear the encumbrances, despite accepting the amounts from the plaintiff after the four-month period in the contract. Thus, it cannot be said that there was any undue delay on the part of the plaintiff to institute the suit for the relief of specific performance.

31. Both courts held that the plaintiff was put in possession of the suit property before the written contract dated 31st December 1973. The payments directly made by the plaintiff towards clearing the encumbrance, and an additional payment made after the four-month period mentioned in the written contract, are proved. The cause of action pleaded is of 23rd June 1978, when the plaintiff's possession was obstructed, defendants' pleadings in the plaintiff's Civil Suit No. 90 of 1978 for injunction thereby refusing to perform the contract, Trial Court's injunction in the earlier suit to protect the plaintiff's possession reversed by the Appellate Court on 22nd January 1979, and refusal of the defendants to comply with the plaintiff's notice dated 12th October 1979 to perform the contract. Thus, the suit filed on 6th February 1980 is well within the three-year limitation period of refusal to perform the contract.

32. Hence, the second question of law is answered accordingly in favour of the plaintiff by holding that extension of time was not necessary, the payment clause of four months cannot be held against the plaintiff to hold that the time was the essence of the contract, and that the suit is filed well within the period of limitation.

33. As far as the third question of law is concerned, admittedly, the suit property is an ancestral joint family property of all the defendants. Admittedly, only defendant no.1 has signed the written contract. The terms and conditions regarding oral contract are also pleaded and proved with reference to defendant no.1. It is a well-established legal principle that the burden is upon the purchaser to prove that an agreement in respect of joint family property, if executed by one of the members, is executed for the legal necessity of the joint family. Hence, the question to be decided is whether the decree for specific performance against all the defendants would be sustainable. Though the plaintiff has sought specific performance of the contract against all the defendants, the plaintiff failed to plead and prove that the agreement would be binding upon all the defendants. Hence, the third question of law is accordingly answered in favour of the defendants by holding that the suit contract would not bind the respective shares of defendant nos.2 to 4, and the suit contract shall be binding only upon the share of defendant no.1.

34. Hence, considering the aforesaid findings, the impugned decree for specific performance would bind only defendant no.1. Although both courts have accepted the plaintiff's contention that he was put in possession in part performance of the contract, a decree for possession is also granted. The written contract provides for handing over possession at the time of execution of the sale deed. However, in view of the findings recorded above that the agreement shall bind only the share of defendant no.1, a decree for possession cannot be granted unless defendant no.1's share is determined and partitioned. The plaintiff has prayed for a decree for possession if found necessary. There is no prayer made for partition and separate possession to the extent of defendant no. 1's share.

35. The Hon'ble Apex Court , in the decision of P.C. Varghese v. Devaki Amma Balambika Devi (2005) 8 SCC 486, held that sub-section (3) of Section 12 of the Specific Relief Act, 1963 was enacted with a view to meet such eventualities when the whole of the contract cannot be performed by the vendor. It is held that the said provision has been enacted for the benefit of the purchaser and, thus, cannot operate to his detriment. It is further held that in view of Section 22(1)(a) of the said Act, a decree for partition and separate possession of the property can be granted in addition to a decree for specific performance of contract; however, Section 22 enacts a rule of pleading that in order to avoid multiplicity of proceedings, the plaintiff may claim a decree for possession and/or partition in a suit for specific performance. It is thus held that a relief in terms of Section 22 of the Specific Relief Act being incidental or ancillary to the main relief of specific performance of contract and, furthermore, being in addition thereto, ordinarily, a proceeding for grant of a final decree for partition should be initiated after the sale deed in terms of the decree for specific performance of contract is executed and registered and not vice versa.

36. The Hon'ble Apex Court in the decision of Babu Lal v. Hazari Lal Kishori Lal (1982) 1 SCC 525, held that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immovable property, as the relief of possession is inherent in the relief for specific performance of the contract of sale. It is further held that the proviso to sub-section (2) of Section 22 provides for an amendment of the plaint on such terms as may be just for including a claim for such relief "at any stage of the proceeding". It is further held that the term "proceeding" is very comprehensive and, generally speaking, means a prescribed course of action for enforcing a legal right and indicates the prescribed mode in which judicial business is conducted, including execution proceedings giving the widest freedom to a court of law so that it may do justice to the parties in the case.

37. Therefore, in the present case, in view of the well-es-tablished legal principles as discussed above, the respon-dents shall be entitled to seek appropriate relief for partition and separate possession as contemplated under Section 22 of the Specific Relief Act.

38. Hence, the impugned decree would require interference by this court to the extent of modifying the decree only as against defendant no.1. The Trial Court decreed the suit by directing defendant no.1 to execute the sale deed in respect of the suit property and hand over possession to the plaintiff. However, no directions are issued with regard to the respective shares of defendant nos.2 to 4. Hence, the decree would bind only the share of defendant no.1.

39. The second appeal is therefore partly allowed by passing the following order:

ORDER

(a) The judgment and decree dated 3rd April 1984, passed by the learned Joint

Civil Judge, Senior Division, Nasik, in Special Civil Suit No. 17 of 1980, confirmed by the judgment and decree dated 2nd May 1992, passed by the Additional District Judge, Malegaon District, Nashik, in Civil Appeal No. 108 of 1989, is modified as under:

(i) The plaintiff's suit for specific performance of the agreement for sale is decreed qua the undivided share of defendant no.1 in the suit property. Hence, defendant no.1 shall execute the sale deed of the suit property to the extent of his undivided share.

(ii) The plaintiff would be entitled to adopt appropriate proceedings as permissible in law for the separation of his share and possession.

(iii) The decree shall be drawn up accordingly.

(iv) There shall be no order as to costs.