

Swapnil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 253 OF 2008**

Dnyanoba Bhika Sorte,
Age : 36 Yrs, Occ : Service,
R/o. Behind Sumit Agency,
Akurdigaon, Pune – 35.
(Legal Heir of deceased respondent no.9)
(Amendment carried out as per court order
dt. 17.09.2021 & 09.07.2025)

...Appellant
(Org.Def.No.2)

VERSUS

1. Sudam Dnyanoba Jadhav
Age : 40 Yrs, Occ : Agriculture
Deceased Thr. Lrs.
- 1-a. Mangala Sudam Jadhav
Age : 55 Yrs, Occ : Household,
- 1-b. Yogesh Sudam Jadhav
Age : 35 Yrs, Occ : Agriculturist,
- 1-c. Nilesh Sudam Jadhav
Age : 32 Yrs, Occ : Agriculturist,
No. (1-a) to (1-c) R/o. Nare,
Tal. Mulshi, Dist. Pune.
2. Shankar Dnyanoba Jadhav
Age : 38 Yrs, Occ : Agriculture,

3. Phulbai Dnyanoba Jadhav,
Age : 65 Yrs, Occ : Agriculture
(Deceased Thr. Lrs. R1, R2, R4 to R7)
No. 1 to 3, all are r/o. Village Nere,
Tal. Mulshi, Dist. Pune.
4. Jamnabai Mohan Garade,
Age : 41 Yrs, Occ : Household work,
R/o. Adhale, Tal. Maval, Dist. Pune.
5. Kunda Chetrum Ghotkule
Age : 32 Yrs, Occ : Household,
R/o. Adhale, Tal. Maval, Dist. Pune.
6. Manda Pandurang Bhadale
Age : 30 Yrs, Occ : Household,
R/o. Nere, Tal. Mulshi, Dist. Pune.
7. Sindhu Balkrishna Garade,
Age : 28 Yrs, Occ : Household,
R/o. Dhamane, Tal. Maval,
Dist. Pune.
8. Shivaji Bhika Sorte
Age : 38 Yrs, Occ : Service,
R/o. Mayurbag Colony, Near Ganesh
Temple, Thergaon, Pune-33.
Deceased Thr. Lrs.

- 8A. Ranjana Shivaji Sorte
Age : 45 Yrs, Occ : Household.
- 8B. Kunal Shivaji Sorte
Age : 32 Yrs, Occ : Service,
- 8C. Rahul Shivaji Sorte
Age : 32 Yrs, Occ : Service
No. 8A to 8C r/o. S. NO. 18/03,
House No. 433/2, Dange Chowk,
Ekta Colony, Ganesh Nagar,
Thergaon, Pune 411 033.
9. Heerabai Bhika Sorte
Age : 57 Yrs, Occ : Household,
R/o. Balewadi, Tal. Haveli,
Dist. Pune.
(Since Decd. Thr. Lrs.)
- 9A. Shivaji Bhika Sorte
Age : 42 Yrs, Occ : Service,
Near Ganesh Temple,
Morgaon, Pune 33.
- 9B. Samindra Mahukar Takale
Age : 46 Yrs, Occ : Household,
R/o. Balewadi, Tal. Haveli,
Dist. Pune.

9C. Sangeeta Bajirao Devkar

Age : 31 Yrs, Occ : Household,
R/o. Devkarwadi of Ghotwade,
Tal. Mulshi, Dist. Pune.

10. Samindra Madhukar Tokale,

Age : 42 Yrs, Occ : Household,
R/o. Balewadi, Tal. Haveli,
Dist. Pune.

11. Sangeeta Bajirao Devkar

Age : 27 Yrs, Occ : Household,
R/o. Devkarwadi, of Ghotwade,
Ghotwade, Tal. Mulshi,
Dist. Pune.

...Respondents

Mr. Nikhil Wadikar a/w. Mr. Niranjan Kandade for the
appellant.

Mr. S. R. Firodiya for respondent nos. 1(a) to 1(c), 2, 4 to 7.

CORAM : GAURI GODSE J

RESERVED ON: 12th FEBRUARY 2026

PRONOUNCED ON: 8th JUNE 2026

JUDGMENT:

1. The appellant is the original defendant no. 2, who
expired during the pendency of this second appeal, and his
heirs have been brought on record as appellants.

Respondent nos. 1 to 7 are the heirs of the original deceased plaintiff, who are plaintiff nos. 1 to 7. The deceased appellant and respondent nos. 8 to 11 are heirs of the original deceased defendant, who are the original defendant nos. 1 to 5.

2. The trial court decreed the suit for specific performance of contract by directing the defendants to execute the sale deed in favour of the heirs and legal representatives of the original deceased plaintiff. After the execution of the sale deed, the plaintiffs' possession is declared to be confirmed as that of the owners. The trial court's decree was challenged by the defendants. However, the first appellate court has dismissed the appeal and confirmed the trial court's decree.

THE PLAINTIFFS' CASE:

3. The plaintiffs prayed for specific performance of the contract in respect of survey no. 215 admeasuring 2 acres 10 gunthas, which was allotted to Gat No. 122, Hissa No. 2. The deceased plaintiff's mother was the sister of the deceased defendant. It is the plaintiffs' case that, as the deceased plaintiff's mother was unwell and was in need of money, the

deceased defendant financially assisted her and also helped the deceased plaintiff financially with cultivating the suit property. The suit property was owned by the plaintiffs. For the security towards the financial, help, the deceased plaintiff executed a document of sale with a condition of reconveyance in favour of the defendants. Accordingly, the name of the deceased defendant (“Bhika Sorte”) was entered in the revenue record. However, the suit property always remained in the possession of the plaintiffs.

4. Despite returning the amount with interest, Bhika Sorte refused to execute the reconveyance deed; accordingly, the plaintiffs issued a legal notice calling upon him to execute it. Thereafter, an agreement dated 25th January 1996 (“suit agreement”) was executed between the deceased plaintiff and Bhika Sorte for a total consideration of Rs. 5,000/- towards the reconveyance of the suit property to the deceased plaintiff. Accordingly, an amount of Rs. 3,000/- was paid to the deceased defendant, that is, Bhika Sorte. The balance amount of Rs.2,000/- was agreed to be paid at the time of registration of the document.

5. The deceased defendant unfortunately expired before the execution of the sale deed. The plaintiff, therefore, requested the defendants to execute the document. However, they refused; hence, the suit for specific performance was filed, offering to pay the balance amount. According to the plaintiffs, possession of the suit property has always been with them. Hence, they prayed for confirmation of possession as owners after the execution of the sale deed.

DEFENDANTS' CASE:

6. Defendant nos. 1, 2 and 3 and Defendant nos.4 and 5 filed their separate written statements and denied the suit claim. It was contended that not all the heirs of Bhika Sorte were added as parties. Hence, the suit was bad for non-joinder of necessary parties. They denied the execution of the suit agreement. It was contended by the said defendants that the sale deed executed in favour of Bhika Sorte by the deceased plaintiff was an absolute sale and nothing was agreed to be reconveyed. The said defendants, therefore, denied the plaintiff's claim of execution of the agreement and the plaintiff's theory of reconveyance. It was further

contended by the said defendants that the suit property was always in their possession and there was no question of any reconveyance, as no such agreement was executed. The said defendants also denied that Bhika Sorte signed the said document. They contended that in 1961, the suit property was sold to the defendants by absolute sale, and not as security. According to the plaintiffs, the document was executed in favour of the deceased defendant to avail financial assistance, but they took no steps from 1962 to 1978. Thus, there was no cause of action for seeking any relief of specific performance against the defendants.

FINDINGS BY BOTH COURTS:

7. The trial court decreed the suit, holding that the suit agreement entered into between Bhika Sorte and the deceased plaintiff was an agreement for sale. The trial court further held that, based on the terms and conditions of the suit agreement, the plaintiffs had paid Rs. 3,000/- to the deceased Bhika, and he had agreed to reconvey the property to the plaintiffs on payment of the balance consideration of Rs, 2000/-. The plaintiffs' readiness and willingness to perform the contract by making the balance payment of

consideration was held in favour of the plaintiffs. Hence, the plaintiffs were held entitled to specific performance of the suit agreement.

8. The trial court also recorded the findings that the plaintiffs were always in possession of the suit property. Hence, the plaintiffs were held entitled to a declaration confirming their possession as owners upon execution of the sale deed. In an appeal preferred by the defendants, the trial court's findings are confirmed, and the plaintiffs are held entitled to the sale deed on payment of the balance consideration. The theory of possession as accepted by the trial court is also confirmed by the first appellate court.

SUBSTANTIAL QUESTIONS OF LAW TO BE DECIDED IN THIS SECOND APPEAL:

9. The second appeal is admitted on 16th April 2008 by framing the following substantial question of law :-

“Whether the Courts have considered and dealt with the admissions given by the witnesses of the original plaintiff to the effect that the agreement for sale in question was a

hand-written document and the effect of non consideration of these admissions ?”

10. When the second appeal was substantially heard on 17th September 2025, learned counsel for the appellants submitted that in addition to the question of law already framed, the second appeal raised another substantial question of law on the document at Exhibit ‘59’ which is unstamped. Hence, this court, on 17th September 2025, framed an additional substantial question of law in view of the proviso of sub-section (5) of Section 100 of the Civil Procedure Code, 1908 (“CPC”). The additional substantial question of law reads as under:-

“Whether the document at Exhibit-59 was admissible and whether it could have been acted upon by ignoring Section 34 of the Bombay Stamps Act read with Article 25 of Schedule I of the Act ?”

SUBMISSIONS ON BEHALF OF THE APPELLANTS:

11. Learned counsel for the appellants submitted that the document relied upon by the plaintiffs could not have been accepted as a concluded contract. The suit property in

respect of which the plaintiffs seek specific performance is not described in the suit agreement. Though the agreement was a handwritten document, as contended by the plaintiffs, no such document was produced on record. The terms and conditions pleaded by the plaintiffs were not proved to constitute a concluded contract. The plaintiffs failed to plead and prove the continuous readiness and willingness to perform their part of the contract. Thus, even the equities in favour of the plaintiffs are not proved, and there was no evidence on record to show that any such agreement for reconveyance was executed.

12. The plaintiffs' witnesses Nos. 1 and 2 admitted in cross-examination that a handwritten document was executed. However, the document that was relied upon by the plaintiffs was a typed document. Hence, in view of the admissions made by the plaintiffs during cross-examination, the typed document relied upon by the plaintiffs could not have been accepted as a valid document between the parties for the reconveyance of the suit property, as contended by the plaintiffs.

13. The findings recorded by both courts based on the agreement produced by the plaintiffs at Exhibit '59' are perverse as the contents of the said document were never proved by any supporting evidence. The sale deed of 1961 at Exhibit '117' executed in favour of Bhika Sorte by the deceased plaintiff (Dnyoba) is not under challenge. Hence, the defendants' ownership was absolute, and there was no reason to execute an agreement for reconveyance. The possession was handed over to the defendants pursuant to the sale deed at Exhibit '117', which also recorded the handover of possession. Hence, the document at Exhibit '59', relied upon by the plaintiffs, could not have been accepted for any reconveyance, nor could the plaintiffs' contention be that the possession was always with them.

14. Learned counsel for the appellants submitted that, even otherwise, the plaintiffs' claim is based on an unregistered document to contend that the plaintiffs are in possession of the property. Hence, an unregistered document would not be admissible as the possession handed over in part performance of the contract is compulsorily registrable. The document relied upon by the

plaintiffs is on a Rs. 20/- stamp paper. Hence, the document is not sufficiently stamped and, therefore, in view of Section 34 of the Maharashtra Stamp Act, 1958 ("Stamp Act"), it cannot be acted upon. Hence, according to the learned counsel for the appellants, the consequences under Section 34 of the Stamp Act, that an unstamped document cannot be acted upon, would mean that the plaintiffs cannot claim any protection based on an unstamped document.

15. Learned counsel for the appellants submitted that the plaintiffs' claim to be in possession is based on the document, which is unstamped. Except for the unregistered and unstamped document, the plaintiffs have produced no evidence to claim possession. To support his submissions, learned counsel for appellants relied upon the decision in ***Yadarao Shrawane Vs Nanilal Shah***¹. Hence, there was no reason for both courts to grant a decree of specific performance and confirm the plaintiffs' possession as owners. Learned counsel for the appellants, therefore, submits that both the questions of law must be answered in favour of the appellants and the impugned judgments and decrees be set aside.

¹ (2002) 6 SCC 404

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

16. Learned counsel for the respondents, i.e. original plaintiffs, submitted that the document at Exhibit '117' dated 25th October 1961, which is a sale deed executed by Dnyanoba, i.e. original plaintiff, in favour of the deceased defendant, i.e. Bhika. During the pendency of the suit, Dnyanoba expired, and the present respondents were brought on record as the heirs and legal representatives. The suit agreement for reconveyance was executed by the deceased, Bhika, in favour of Dnyanoba; the original document is produced on record and admitted in evidence as Exhibit '59'. Hence, at this stage, there is no question of raising any objection on the admissibility of the document on the ground that it is unstamped.

17. So far as the admissions in cross-examination of the plaintiffs' witnesses relied upon by the learned counsel for the appellants are concerned, they are stray admissions that cannot be read as stand-alone admissions, ignoring other material evidence on record accepted by both the courts. The stray admissions of the plaintiffs that the document at Exhibit '59' was a written document cannot be interpreted to

mean that the plaintiffs admitted that the document at Exhibit '59', i.e. the suit agreement, was a handwritten document and not a typed document. The suggestion in the cross-examination was with reference to the document being in writing. Thus, the plaintiffs' witnesses' answers at the highest mean that it was a typewritten document. The issue raised by the learned counsel for the appellants, as to whether the document is handwritten or typewritten, would amount to reappraisal of the evidence, which is not permissible under Section 100 of the CPC.

18. The trial court framed the specific issue on whether the plaintiffs proved that the deceased defendant, i.e. Bhika Sarote, had agreed to sell the suit land to the deceased plaintiff by executing the document on 25th January 1996. The findings recorded by the trial court are in paragraph 22 of the judgment, which refers to the entire oral evidence. The findings recorded by the trial court indicate that there was no such specific admission by the plaintiffs, which means that the document at Exhibit '59' was handwritten.

19. Hence, the conclusions recorded by the trial court and the first appellate court are on correct appreciation of the oral

evidence on record. There is no perversity in the findings recorded by both courts on the document at Exhibit '59', which was accepted as a typewritten document. Hence, the impugned judgments and decrees do not require any interference on the first question of law framed at the time of admission of the second appeal, as it is not a substantial question of law and is based on an appreciation of the evidence.

20. Learned counsel for the respondents further submitted that the possession was not handed over to the plaintiffs in furtherance of the agreement at Exhibit '59'. The plaintiffs' prayer is for specific performance of the agreement at Exhibit '59'. Therefore, neither stamp duty was payable on the document, nor was it required to be registered. Hence, at the stage of the second appeal, there would not be any question of deciding the admissibility of the document on the ground that it was unstamped.

21. After examining the evidence on record, the trial court recorded findings that the plaintiffs had always been in possession of the suit property. It was only on the execution

of the sale deed that the plaintiffs' possession was required to be confirmed as owners.

22. To support his submissions, learned counsel for the respondents relied upon the decisions in ***Sham Pundalik Dhumatkar Vs. Pushpa Mohanlal Talreja and Ors***², ***C. P. Francis Vs. C. P. Joseph and Ors***³ and ***Suresh Lataruji Ramteke Vs. Sumanbai Pandurang Petkar and Ors***⁴, ***Javer Chand Vs. Pukhraj Surana***⁵, ***Mahendra Mahadeo Deshbratar and Ors. Vs. Kailash Bhauraoji Chandrakhade***⁶, ***Damodar Vs. State of Rajasthan***⁷, ***Ramachandra Reddy Vs. Ramulu Ammal***⁸.

SUBMISSIONS IN REJOINDER ON BEHALF OF THE APPELLANTS :

23. In response to the arguments made on behalf of the respondents, learned counsel for the appellants submitted that, according to the defendants, the possession was always with the defendants in view of the sale deed at Exhibit '117'. Therefore, the burden was upon the plaintiffs to prove

2 2016 (5) ABR 552

3 2025 SCC OnLine 1896

4 (2023) 17 SCC 624

5 1961 SCC OnLine SC 22

6 2014 (5) Mh.L.J. 807

7 (2004) 12 SCC 336

8 2025 SCC OnLine SC 877

that the possession was with them. Hence, in view of the contentions raised on behalf of the plaintiffs, the provision of Article 25 of Schedule 1 of the Stamp Act would apply, and the plaintiffs would be under an obligation to have the document stamped and registered to claim possession in furtherance of that contract. He further points out that the suggestion in the cross-examination that it was a typewritten document is based on the plaintiff's pleadings. Hence, when the plaintiffs seek specific performance based on a handwritten document and produce the typewritten document, there would be no question of accepting the document produced on record as the valid document evidencing a concluded contract between the parties.

24. The decisions relied upon by the learned counsel for the respondents are on the admissibility of the document. However, the additional question of law framed by this court concerns the consequences of acting upon an unstamped document under Section 34 of the Stamp Act. Learned counsel for the appellants, therefore, submits that both the questions of law must be answered in favour of the appellants. However, even if the first question of law is held

to be based on an appreciation of the evidence, the second appeal deserves to be allowed on the additional substantial question of law, which is based on the applicability of the provisions of Section 34 of the Stamp Act. He, therefore, submits that the second appeal deserves to be allowed.

LEGAL PRINCIPLES:

25. The decision of the Apex Court relied upon by the learned counsel for the respondents in ***C P Francis*** lays down the principles for framing an additional substantial question of law. It is held that the High Court must be satisfied that the new question is a substantial question of law and not a mere legal plea, and that the court should record reasons to frame an additional question of law. In the present case, I have already recorded reasons for framing the additional question of law. Learned counsel for the respondents had waived notice on the additional substantial question of law. Both parties were granted time to make submissions on the additional question of law. Accordingly, the parties have made their respective submissions.

26. As far as the decision in ***Suresh Ramteke*** is concerned, it pertains to the procedure to be followed by a

second appellate court. The legal principles on interference with the findings of fact or reappraisal of evidence are summarised by the Apex Court in the said decision. The Apex Court referred to the well-established legal principles in the decision of ***Santosh Hazari v. Purushottam Tiwari***⁹, and further held that the substantial question of law framed by the court must be answered at the time of hearing, and if it is found that no substantial question of law arises for consideration, the court is required to record the reasons for the same.

27. In view of the different facts of the present case and the substantial questions of law framed in this second appeal, the decisions in ***Javer Chand*** and in ***Damodar***, are not applicable to decide the controversy in the present case. In ***Mahendra Deshbratar***, this court held that once a document is admitted in evidence and marked as an exhibit without objection in the trial court, the issue cannot be reopened thereafter. In ***Sham Dhumatkar***, this court held that a suit for specific performance based on an unregistered agreement for sale would be maintainable.

28. In ***Ramachandra Reddy***, the Apex Court held that the

⁹ (2001) 3 SCC 179

jurisdiction to interfere in concurrent findings is limited. The Apex Court reiterated the legal principles regarding the exercise of jurisdiction under Section 100 of the CPC, summarised by the Apex Court in **Suresh Lataruji Ramteke** and **Santosh Hazari** as under:

“(a) Not previously settled by law of land or a binding precedent.

(b) Material bearing on the decision of case; and

(c) New point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter.”

29. In **Angadi Chandranna**, the Apex Court held that only if the first appellate court has failed to consider the law or the evidence, has considered inadmissible evidence, or has acted without evidence, can the second appellate court exercise powers under Section 100 of the CPC. It is further held that Section 103 permits the High Court to go into the facts only when the courts below have not determined or rendered any finding on a crucial fact, or when, after deciding the substantial question of law, the facts of a particular case demand re-determination. Therefore, it is held that there must first be a decision on the substantial question of law, to which the facts must be applied, to determine the issue in

dispute and when the first appellate court in exercise of its jurisdiction has considered the entire evidence and rendered a finding, the High Court cannot re-appreciate the evidence just because another view is possible, when the view taken by the first appellate court is plausible and does not suffer from vice in law.

30. In ***Yadarao Dajiba Shrawane***, relied upon by the learned counsel for the appellants, the Apex Court held that when the judgment of the final court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or on ignoring material evidence, the High Court in second appeal is entitled to interfere with the judgment. It is further held that the admission of parties or their witnesses is a relevant piece of evidence and should be given due weight by courts, and a finding of fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in second appeal.

31. In view of the additional substantial question of law, both parties were called upon to make their submissions on the decisions of this court in ***Dharati Developers v.***

Madhukar Atmaram Patil¹⁰, and the decisions referred therein, that is, **Balwantgir Ganpatgir Giri through his LRs Nanibai wd/o Balwant Giri v. Manasi Construction and Developers**¹¹, and **Bhupendrabhai Rambhai Patel v. Sau. Lilabai Mahadeorao Labde**¹².

32. Learned counsel for the appellants submitted that possession of the plaintiffs is based on the document Exhibit 59; therefore, it would attract payment of stamp duty. The counsel for the respondents submitted that possession was neither handed over in furtherance of the document at Exhibit 59 nor was it to be handed over pursuant to the said document; therefore, the document will not be chargeable with stamp duty.

33. This court in **Dharati Developers** referred to and followed the legal principles settled in **Balwantgir Ganpatgir Giri** and **Bhupendrabhai Rambhai Patel** and held that when the Memorandum of Understanding shows that it is not an agreement, but is just an understanding arrived at between the parties by virtue of which no possession or title is delivered and the possession is agreed to be delivered and

10 2017 SCC OnLine Bom 9810

11 2006 (5) Mh.L.J. 306

12 2010 (5) Mh.L.J. 990

is to be delivered only at the time of agreement of sale it cannot be considered as conveyance within the meaning of the said Explanation-I to Article 25 of schedule I of the Stamp Act.

34. In ***Balawantgir Ganpatgir Giri***, this court held that when the agreement was purely an agreement for sale, with no recital of delivery of possession under the agreement, it cannot be construed as a conveyance within the meaning of Explanation I to Article 25 of Schedule I to the Stamp Act.

35. In ***Bhupendrabhai Rambhai Patel***, the document in question contained a recital that possession of the suit field, as per measurement, was given by the defendant to the plaintiff, and the plaintiff had accepted it; hence, it was held to be chargeable to stamp duty as per Explanation I to Article 25 of the Stamp Act. It was therefore held that Section 34 of the Stamp Act specifically states that such an instrument chargeable with duty cannot be admitted in evidence for any purpose and it cannot be acted upon by such person and prohibits its use. Hence, the trial court's order impounding the document was upheld.

CONSIDERATION OF SUBMISSIONS:

36. In light of the legal principles discussed in the paragraphs above, I have carefully perused the entire record and proceedings to consider the rival submissions. The suit property admittedly was an ancestral property of the deceased plaintiff. According to the plaintiffs, the sale deed in favour of the deceased Bhika was executed solely as security for the financial assistance provided by him. Hence, at the time of execution of the sale deed, the rights to reconvey and repurchase were agreed upon. With these specific pleadings, the plaintiffs claimed to be always in possession and further prayed for reconveyance based on the suit agreement, which, according to the plaintiffs, was executed by the deceased defendant, that is, Bhiku Sorte, by accepting Rs. 3,000/- as an earnest amount. It was agreed between the deceased plaintiff and the deceased defendant that the balance of Rs. 2,000/- would be paid at the time of registration of the sale deed. However, due to the death of Bhiku Sorte, the sale deed could not be executed.

37. To support the contentions on the suit agreement between the parties for reconveyance, it is pleaded by the

plaintiffs that the deceased plaintiff had repaid an amount of Rs. 1800/- which was availed by way of financial assistance by the deceased defendant. However, for the interest amount payable to the deceased defendant up to 1978, the reconveyance was not executed immediately. Based on these pleadings, the plaintiffs contended that they would be entitled to reconveyance based on the suit agreement. Therefore, it is not pleaded by the plaintiffs that they were put in possession in pursuance of or in furtherance of the terms and conditions of the suit agreement, i.e. agreement dated 25th January 1996. Since the plaintiffs never claim to be in possession under the terms and conditions of the suit agreement, there is no question that the document required to be registered or stamped. The plaintiffs' prayer is for confirmation of their possession as owners upon execution of the sale deed, as physical possession has always been with them.

38. A party is entitled to claim specific performance even of an oral agreement, provided the concluded contract is pleaded and proved. Therefore, a simple agreement for sale need not be stamped or registered. In the present case, the

plaintiffs seek specific performance of an agreement dated 25th January 1996 on the ground that the possession was always with the plaintiffs independent of the said agreement and the deceased defendant had agreed to execute the sale deed in favour of the deceased plaintiff; hence, there would not arise any question of payment of stamp duty as sought to be argued on behalf of the appellants.

39. The trial court held that the document at Exhibit 117 constituted an outright sale in favour of Bhika Sorte and not a sale subject to a repurchase condition. The trial court has examined oral evidence in detail. The oral evidence of PW-3 and PW-4, who were the attesting witnesses to the suit agreement at Exhibit 59, was examined in detail by the trial court for the purpose of admitting the document in evidence, and their contents were accepted as true and correct. The trial court also considered the suggestions regarding whether the agreement is handwritten or typed. To examine the objection to the signature of Bhika Sorte on the document, the trial court has compared the signature on the admitted document at Exhibit 117, that is, the sale deed in favour of Bhika Sorte, the nomination documents at Exhibits 122 and

123 regarding gratuity and insurance and held that the document at Exhibit 59 is signed by Bhika Sorte.

40. Thus, the contents of the document Exhibit 59 were accepted to be correct, which records that the possession was always with the deceased plaintiff. The trial court examined the revenue record, which showed the deceased plaintiff's name in the cultivation column. The trial court has discussed in detail the oral evidence of the plaintiffs and the defendants and held that the plaintiff's evidence in support of their possession has not been rebutted by the defendants.

41. The first appellate court, being the last fact-finding court, has reexamined the entire evidence. The judgment in the appeal shows that the first appellate court reappreciated all the evidence. While confirming the trial court's findings on the acceptance of Bhika's signature on Exhibit 59, the first appellate court has discussed in detail the documents at Exhibits 117, 122 and 123. Nothing is shown in this second appeal to point out any perversity in the findings recorded by both courts in appreciating the evidence, except for referring to the stray admissions regarding the questions put to the plaintiffs' witnesses regarding the document being

handwritten. Those admissions are examined by both the courts.

42. I have perused the evidence and the findings in respect thereof. The answers given by the plaintiffs' witnesses to the questions about the document being handwritten show that, according to them, it was a written document. Therefore, I do not find any substance in the objections raised that the plaintiffs' case was that the document was handwritten and that what was relied upon was a typewritten document. From the pleadings and evidence, it is clear that, according to the plaintiffs, the document at Exhibit 59 was a written document, meaning thereby a document in writing.

43. As far as the issue of possession is concerned, both courts have held that the plaintiffs were always in possession and that, despite the document at Exhibit '117', the possession was never handed over to the defendants. The defendants have failed to prove that the deceased defendant was at any time in possession of the suit property. In view of the concurrent findings of fact, the issue of possession is not required to be examined in this second appeal, as no question of law arose with reference to the findings of

possession. The main controversy, therefore, to be decided in the present case pertains to the first question of law regarding the admissions relied upon by the appellants on whether the document is handwritten or typed and whether the appreciation of evidence by both courts is correct.

44. Learned counsel for the appellants has sought to bifurcate the statements on the ground that the admissions pertain to the handwritten document and not a typed one. However, a careful perusal of the pleadings and the entire evidence shows that the plaintiffs contended that the document was in writing. Thus, from the pleadings and evidence, it appears that there was no controversy as to whether the document is typed or handwritten. Both courts have therefore rightly accepted the document as a written document of contract. The impugned judgments and decrees, based on a correct appreciation of the evidence, would not require any interference on the first question of law framed at the time of admission of the second appeal.

45. So far as the additional question of law is concerned, it pertains to the applicability of Section 34 of the Stamp Act, which reads as under :-

“34. Instruments not duly stamped inadmissible in evidence, etc.

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped or if the instrument is written on sheet of paper with impressed stamp such stamp paper is purchased in the name of one of the parties to the instrument.

Provided that, -

- (a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of,*
- (i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and*
 - (ii) a penalty at the rate of 2 per cent of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument:*

Provided that, in no case, the amount of the penalty shall exceed four times the deficient portion of the stamp duty.

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp; the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973;

(d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act;

(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral admission of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid.”

46. The plain reading of Section 34 indicates that it pertains to the admissibility of a document in evidence or to acting upon it, which requires payment of stamp duty. Therefore, the additional substantial question of law goes to the root of the matter; hence, it is considered in reference to the applicability of Section 34 to the document at Exhibit 59. In the present case, Exhibit '59' is an agreement for sale. Learned counsel for the appellants relied upon Explanation I to Article 25 of Schedule 1 of the Stamp Act to support his submission that the document at Exhibit 59 would attract stamp duty as the plaintiffs claim to be in possession pursuant to the said document and because it is unstamped, it cannot even be acted upon in support of the theory of possession. Therefore, it is necessary to understand the meaning of Explanation I to Article 25 of Schedule 1 of the Stamp Act. The relevant extract of the Explanation I reads as under:

“Explanation I - For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred or agreed to be transferred to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.

Provided that, the provisions of section 32A shall apply *mutatis mutandis* to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section:

Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale, which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.

Provided also that where proper stamp duty is paid on a registered agreement to sell an immovable property, treating it as a deemed conveyance and subsequently a conveyance deed is executed without any modification, then such a

conveyance shall be treated as other instrument under section 4 and the duty of one hundred shall be charged”

47. Thus, from the wordings the aforesaid ‘Explanation I’ it is clear that for the purpose of payment of stamp duty, an agreement to sell immovable property is deemed to be a conveyance only in the event of (i) handing over of possession before execution of such an agreement as part performance of such an agreement or (ii) handing over of possession at the time of execution of such an agreement as part performance of such an agreement, or (iii) handing over of possession after execution of the agreement in furtherance of such an agreement. In simple words, when only possession is sought to be transferred in pursuance of or in furtherance of an execution of an agreement to sell with a requirement to execute a separate deed for conveying title or if possession and title, both is sought to be transferred in pursuance of or in furtherance of an agreement to sell, without any further requirement to execute a sale deed to convey the title, such agreements for sale shall be deemed to be a conveyance for the purpose of payment of stamp duty. Therefore, even when, for the transfer of title, a further

deed of conveyance is required to be executed, but possession is transferred in pursuance of or in furtherance of the agreement for sale, such an agreement would attract payment of stamp duty because possession is transferred in pursuance of or in furtherance of the contract. Such a requirement is a safeguard against the avoidance of stamp duty.

48. By way of an illustration, when an agreement is executed under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“MOFA”), possession is handed over in pursuance of or in furtherance of that agreement; therefore, such an agreement attracts stamp duty, as no further document of conveyance is required to be executed and the title and possession is transferred to the purchaser, pursuant to such an agreement. Therefore, when the transfer of possession is in pursuance or furtherance of an agreement to sell, such an agreement would attract payment of stamp duty.

49. The provisos to the said Explanation I, therefore, clarify that where subsequently a conveyance is executed in

pursuance of such an agreement for sale where stamp duty is already paid on the ground that the agreement is deemed to be a conveyance, an adjustment towards the total duty leviable is provided, subject to any modification in the agreement that may attract further charges. Therefore, the object of Section 34 and the Explanation I to Article 25 of Schedule 1 of the Stamp Act appears to be the prevention of avoidance of payment of stamp duty.

50. In the present case, possession was already with the deceased plaintiff by virtue of original ownership; however, the title was transferred in 1961 in favour of the deceased defendant, that is, Bhika Sorte, by executing a sale deed. Therefore, at the time of execution of the suit agreement by Bhika Sorte in favour of the deceased plaintiff, it was recorded and agreed that the possession already with the deceased plaintiff would be confirmed as the owner upon execution of the sale deed. Therefore, the transfer of title and confirmation of possession as owner was to occur contingent upon the execution of a sale deed. Therefore, stamp duty would be paid at the time of execution of the sale deed, as title would be transferred only upon execution of the sale

deed, and possession would be confirmed as owner only after execution of the sale deed. Therefore, there is no avoidance of payment of stamp duty. Hence, the payment of stamp duty on the suit agreement for sale would have no relevance with reference to Section 34 of the Stamp Act in the present case.

51. It is not the plaintiffs' case that the possession with them was in pursuance of or in furtherance of the document at Exhibit 59. Both courts have concurrently held that the possession was always with the plaintiffs despite the sale deed at Exhibit 117 in favour of Bhika Sorte. Accordingly, the subsequent document at Exhibit 59 is accepted as an agreement to sell by Bhika Sorte in favour of the deceased plaintiff, confirming and recording that the possession was always with the deceased plaintiff. Hence, there is no substance in the arguments raised by relying upon Section 34 of the Stamp Act.

52. In the present case, stamp duty would be payable at the time of execution and registration of the sale deed pursuant to the impugned decree. Therefore, there would not be any question of transfer of title by avoiding payment of

stamp duty, as the title would be transferred to the plaintiffs only upon execution and registration of the sale deed by making payment of stamp duty, and only thereafter would the possession stand confirmed as owners. Hence, even the additional substantial question of law is accordingly answered in favour of the respondents.

53. For the reasons recorded above, the impugned judgments and decrees would not require any interference in this second appeal. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]