

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.386/2017

Purushottam Chandrabhanji Nagpure

..vs..

Namdeo Shankar Khadake and anr

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri V.A. Kothale, Counsel for the appellant.

Shri Devdatta Deshpande, Counsel for the respondents.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 27, 2017.

1. **Heard learned counsel Shri V.A. Kothale for the appellant and learned counsel Shri Devdatta Deshpande for the respondents.**

2. **The present appeal is ADMITTED on the following substantial questions of law:**

(i) Whether refusal of specific performance by learned Judge of the Trial Court and affirmed by learned Judge of the Appellate Court can be said to be good in law, especially when there is a specific finding given by learned Judge of the Trial Court that the claim of the plaintiff is true and genuine?

(ii) Whether the Courts are not entitled to grant decree of specific performance only on the ground that defendant No.1 has executed a sale-deed in favour of defendant No.2, especially when the said defendant was also party to the suit?

(iii) Whether the Appellate Court was right in directing that only defendant No.1 is liable to pay damages.

3. Learned counsel Shri Devdatta Deshpande waives Notices for the respondents.

4. Call record and proceedings.

Civil Application No.878/2017

1. This is an application under Order XXXIX Rules 1 and 2 for grant of interim injunction.

2. Heard learned counsel Shri V.A. Kothale for the applicant/appellant and learned counsel Shri Devdatta Deshpande for the non-applicants/respondents.

3. By this application, the prayer is that non-applicant/respondent No.2 be restrained from creating any third party interest in the suit filed, till pendency

of the present second appeal.

4. The present second appeal is already admitted.

5. In that view of the matter, the civil application is allowed in terms of the prayer clause of the civil application.

6. Non-applicant/respondent No.2 shall not create any third party interest in respect of the suit property, during the pendency of the second appeal.

7. The civil application is allowed and disposed of.

JUDGE

!! BRW !!

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