

(( 1 ))

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

LETTERS PATENT APPEAL NO.17 OF 1991 IN  
FIRST APPEAL NO.953 OF 1980  
(FIRST APPEAL NO.757 OF 1989) **WITH**  
CIVIL APPLICATION NOS.3159/1991 & 2593/2003

Pandit Bajirao Wabale,  
Adult, R/o Mhatar Pimpri,  
Taluka Shrigonda,  
District Ahmednagar,  
Legal heirs brought on record of  
the appellant as per order of this  
Court dated 5.3.2003 in  
Civil Application St.No.2347/2003

Pandit Bajirao Wabale,  
Since deceased, through his Legal Heirs

1. Ashabai Pandit Wabale,  
Age 65 years, Occu. Household,  
R/o Mhatar Pimpri, Tq. Shrigonda,  
District Ahmednagar,  
(Died, Appellant Nos.2 to 5 and  
respondent Nos.5-A to 5-C are  
legal heirs of appellant No.1)
2. Balasaheb @ Kiran Pandit Wabale,  
Age 40 years, Occu. Labour,  
R/o Mhatar Pimpri, Tq. Shrigonda,  
District Ahmednagar,
3. Bajirao Pandit Wabale,  
Age 38 years, Occu. Rickshaw Driver,  
R/o 7/203, P.M.C. Colony,  
Sambhaji Nagar, Wakade Wadi,  
Pune – 3
4. Smt. Usha Vasantrao Mane,  
Age 45 years, Occu. Household,  
R/o Flat No.23, Ridhi Sidhi Apartment,  
Canara Bank Lane,  
Bibawe Wadi, Pune – 37

(( 2 ))

5. Smt. Mangal Jalindhar Bhosale,  
Age 42 years, Occu. Household,  
R/o Village Fakrabad, Tq. Jamkhed,  
District Ahmednagar. ... APPELLANTS

**VERSUS**

1. Smt. Padmawati Ganpatrao Hule,  
(Since deceased), through her L.Rs.
- 1-A) Mandakini Ganpatrao Hule,  
(Died on 18.7.2017 – No L.Rs.)
- 1-B) Urmila Ganpatrao Hule,  
Age 62 years, Occu. Household,  
R/o Nargis Cottage, Juhu Beach,  
Mumbai
2. Smt. Salubai Najirao Wabale,  
Since deceased, by her L.Rs.
- 2-A) Padmavati Ganpatrao Hule  
Nargis Cottage, Juhu Beach,  
Bombay – 54
- 2-B) Pandit Bajirao Wabale,  
Mhatar Pimpri, Tq. Shrigonda,  
District Ahmednagar.
- 2-C) Godavari Bhikoba Hule,  
149, Guruwar Peth,  
Bankar wada, Pune – 42
- 2-D) Gunwanti Shankar Poman,  
Laxmabai Patil, Wadi,  
Opp. Telephone Exchange,  
Gokhale Road, Duda (North)
- deceased through her L.Rs. on record  
of R.No.2-D as per Court Order dated  
5.3.2003 in C.A. No.2462/1997
- 2-D-1) Balkrishna Shankarrao Poman,  
(Deceased through legal heirs :
- 2D-1A) Smt. Vandana w/o Balkrushna Poman,  
Age 45 years, Occu. Household,

(( 3 ))

R/o H.110, 146,  
Ashtavinayak Society, Laxminagar,  
Parvati, Pune -1

2D-1B) Anand s/o Balkrushna Poman,  
Age 22 years, Occu. Education,  
R/o as above.

2D-1C) Kum. Pooja d/o Balkrishna Poman,  
Age 18 years, Occu.Education,  
R/o as above

2-e) Damayanti Ramchandra Ghogare,  
1229, Ravivar Peth,  
Kachi Ali, Opp. Kammu Paliwan Talim,  
Pune – 411 002

2-f) Suman Dattatraya Theukar  
P.W.D. Store, Near Mental Hospital,  
Alandi Road, Yerwade,  
Pune – 411 006

3. Bajirao Pandit Wabale

4. Kiran Pandit Wabale

5. Sanjay Pandit Wabale

Respondents Nos.3 to 5 minors,  
through their guardian mother  
Sou. Ashabai Pandit wabale

Legal heirs brought on record of the  
respondent No.5 as per order of this  
Court dated 5.3.2003 in Civil  
Application No.968/2003

5. Sanjay Pandit Wabale,  
since deceased, through his L.Rs.

5-A) Sarika Sanjay Wabale,  
Age 25 years, Occu. Household,  
R/o Mhatar Pimpri, Tq. Shrigonda,  
District Ahmednagar.

5-B) Aniket Sanjay Wabale,  
Age 5 years

(( 4 ))

5-C) Shrinath Sanjay Wabale  
Age 3 years,

Respondents No.5B to 5C are minors,  
u/g of their mother i.e.  
respondent No.5-A ... RESPONDENTS

.....  
Shri R.N. Dhorde, Senior Counsel with  
Shri V.R. Dhorde, Advocate for appellants  
Shri P.B. Shirsath, Advocate for respondent No.1-B  
.....

CORAM: T.V. NALAWADE AND  
SUNIL K. KOTWAL, JJ.

Date of Reserving judgment : 13th February, 2018.

Date of pronouncing judgment : 23rd February, 2018

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. This Letters Patent Appeal is directed against the judgment and order of learned Single Judge of this Court in First Appeal No.953/1980 (First Appeal No.757/1989), wherein the judgment and decree passed by the Civil Judge, Senior Division, Ahmednagar in Special Civil Suit No.220/1976 was quashed and set aside and instead, decree for specific performance of the suit property was passed. Being aggrieved with this judgment and order, the original defendant No.1 filed Letters Patent Appeal No.17/1991, challenging the judgment and order passed in First Appeal No.953/1980 (First Appeal No.757/1989). On 2.5.2003, Letters Patent Appeal No.17/1991 was allowed only on the

ground that the suit is not within limitation. Being aggrieved, the plaintiff filed Civil Appeal No.7456/2003 before the Hon'ble Supreme Court. On 15.12.2016, the Hon'ble Supreme Court allowed the Civil Appeal No.7456/2003, stating that the suit is not barred by limitation and remanded the matter to this Court by deciding the other issues.

2. Facts in nutshell are that, the plaintiff filed Special Civil Suit No.220/1976 against the defendants No.1 to 5 for specific performance of contract of sale dated 22.1.1972, and in the alternate, for refund of earnest amount paid to the defendants. The agricultural land bearing Survey no.69 (Gat No.71), admeasuring 11 acres and 1 guntha, situated at village Mhatarpimpri, Taluka Shrigonda, District Ahmednagar together with well, electric motor pump and right to take water from the well situated in Gat No.72 is the suit property. Defendant no.1 is brother of plaintiff. Defendant No.2 is mother of defendant No.1 and defendants No.3 to 5 are minor sons of defendant No.1, who ere represented by their mother Ashabai Pandit Wable. Defendant No.1 was in need of money for payment of loans borrowed from Society as well as from Scheduled Banks. Therefore, on his request, on 22.1.1972, written agreement of sale was executed by defendants No.1 to 5 in favour of plaintiff and agreed to sell the suit land for total consideration of

Rs.40,000/-. The registered sale deed was to be executed within three months from 22.1.1972. On the date of agreement, amount of Rs.32,200/- was paid to the defendants and out of this amount, amount of Rs.13,751/- was paid to Co-operative Credit Society, Mhatarpimpri, amount of Rs.2096/- was paid to the Union Bank of India, amount of Rs.4900/- was paid to the Ahmednagar District Co-operative Land Development Bank and amount of Rs.3394/- was paid for satisfaction of the decree passed against defendant No.1. The balance amount of Rs.7800/- was to be paid at the time of registration of the sale deed. Possession of the suit land was handed over to the plaintiff on the date of agreement of sale. However, at that relevant time, plaintiff used to stay at Bombay with her children, and taking advantage of this fact, defendant No.1 tried to raise loan from various agencies. Plaintiff was always ready and willing to perform her part of the contract. However, defendants avoided to execute the sale deed despite repeated requests by plaintiff. On 29.1.1972, plaintiff issued public notice in respect of execution of agreement of sale, calling objections from third persons as defendants were not ready to execute registered sale deed after receiving the balance consideration of Rs.7800/-, plaintiff was constrained to file the suit for specific performance of contract of sale.

3. By filing written statement Exhibit 21 and Exhibit 36, defendant No.1 countered the suit claim contending that the agreement of sale dated 22.1.1972 was in the nature of security of loan of Rs.32,200/- borrowed from the plaintiff to wipe off liabilities that were incurred by the defendants. Defendant No.1 has repaid amount of Rs.27,500/- to the plaintiff out of the said loan. Even possession of the suit land was never delivered to the plaintiff.

4. Next contention of defendant No.1 is that, suit is barred by limitation and the alleged agreement of sale is void as plaintiff was not agriculturist at the time of execution of agreement.

5. On behalf of minor defendants No.3 to 5, their mother filed written statement and adopted the written statement filed by defendant No.1. These defendants contended that the defendant No.1 Pandit Bajirao Wable had left the authority of Karta of his joint family and as such, he had no authority to execute the sale agreement in question. Defendants No.3 to 5 are having their undivided share in the suit property and it being a minor's property, it cannot be sold without permission of the District Court. Defendant No.1 is addicted to liquor and in that state of mind, he had executed the said

agreement in question.

6. Learned trial Court framed issues at Exh.48. After considering the evidence placed on record, trial Court answered almost all the issues in favour of plaintiffs except Issue No.4 of limitation. Trial Court dismissed the suit claim only on the ground that it is barred by limitation.

7. In First Appeal No.953/1980 (First Appeal No.757/1989), the learned Single Judge allowed the appeal and passed decree for specific performance of the agreement of sale. Therefore, this Letters Patent Appeal arises.

8. As observed above, the issue of limitation has been finally determined by the Hon'ble Apex Court and it is held that the suit is well within limitation. Therefore, in this Letters Patent Appeal we need not consider the issue of limitation.

9. At the outset, we must observe that, the judgment and findings of learned Single Judge, passing decree of specific performance of contract is challenged only by defendant No.1, who is the father of original defendants No.2, 3 and 5, who were minor at the time of above said agreement of sale. Due to passage of time, the minor defendants No.3 to

5 have attained majority in the year 1989, when the First Appeal was filed by original plaintiff in the year 1990. Even after attaining majority, defendants No.3 to 5 have not challenged the decree for specific performance of the contract which was passed in the year 1991 – on 12/13.9.1991.

10. Undisputedly, Regular Civil Suit No.7/1966 for partition of suit lands was filed in the Court of Civil Judge, Junior Division, Shrigonda by original defendants No.3 and 4 through their mother against present defendant No.1 (father) and others. In that suit, compromise decree (Exh.106) was passed and one fourth share in the present suit land was allotted to the defendant No.1 and 3/4<sup>th</sup> share was allotted to the share of defendants No.3 and 4 and to their mother. From the record, it appears that, that decree was not executed by effecting division of the suit land by metes and bounds. However, as per trite law, on the date of institution of Regular Civil Suit No.7/1966 for partition by defendants No.3 and 4 the joint family status of the joint family of defendants No.1, 3 and 4 had come to an end. After 1966, neither defendant No.1 can act as Karta of the joint family of defendants No.3 to 5 and their mother nor he can represent or defend the interest of defendants No.3 to 5 in the suit property. Therefore, while deciding this Letters Patent

Appeal, the defences which were available to defendants No.3 to 5 as minor sons, are not available to the defendant No.1. The defendant No.1 has to stand on his own legs. On the other hand, as original defendants No.3 to 5 have not challenged the judgment and decree for specific performance of the contract, passed in First Appeal No.757/1989, that decree has reached to finality, so far as it pertains to rights of defendants No.3 to 5 in the suit property.

11. Shri Dhorde, learned Senior Counsel for appellant submitted that, the agreement of sale dated 22.1.1972 was obtained by plaintiff as a security for hand loan borrowed by defendant No.1 from the plaintiff, to clear the outstanding Bank loans. He took us through the oral evidence led by both the parties and submitted that, though registered sale deed was to be executed within three months from the date of execution of agreement of sale, no positive steps were taken by plaintiff to obtain registered sale deed of the suit land from defendants. This indicates that, the true nature of the agreement was only security for loan. He pointed out our attention towards public notice (Exh.98) and made last submission that, as defendants would become landless due to passing of decree for specific performance, considering hardship to the defendants, Court shall exercise discretion in favour of the defendants and not in

favour of plaintiff who is a financially sound woman. He fairly admits that, at present the original plaintiff is in possession of the suit land. He placed reliance on the cases of **Hemanta Mondal and others Vs. Ganesh Chandra Naskar** reported in **[(2016) 1 SCC 567]**, **Ramesh Chand (dead) through Legal Representatives Vs. Asruddin (Dead) through Legal Representatives and another**, reported in **[(2016) 1 SCC 653]** and **Satish Kumar Vs. Karan Singh and another** reported in **[(2016) 4 SCC 352]**.

12. Per contra, Shri P.B. Shirsath, learned counsel for respondent No.1 (original plaintiff) submitted that, in the pleadings, plaintiff has averred in clear words her readiness and willingness to perform her part of the contract. He pointed out our attention towards para 6 of the plaint as well as deposition of plaintiff recorded before the trial Court.

13. Next limb of arguments of learned counsel for the respondent is that, concurrent findings have been given by trial Court as well as first appellate Court that defendant No.1 failed to prove that the document in question is security for loan borrowed by defendant No.1. He submitted that, otherwise also, no substance has been brought on record by defendant No.1 to establish that true nature of the impugned

document was document of security for loan. He took us through the contents of the entire agreement of sale and pointed out that the contents of agreement of sale indicate that defendants agreed to sell out the suit land for total consideration of Rs.40,000/- for the legal necessity of their family, i.e. repayment of various outstanding Bank loans.

14. On query made by this Court regarding bar under Section 8(2) of the Hindu Guardians and Wards Act, 1956, he submitted that, conjoint reading of Section 8 and Section 12 of the Guardians and Wards Act makes it clear that, father being natural guardian of the minor sons can alienate even the property of minor sons for the benefit of the minor. He placed reliance on **Narayan Vs. Uday Kumar** reported in **[1993(2) Mh.L.J. 1653]**; **Shri Narayan & others Vs. Shridhar** reported in **[(1996) 8 SCC 54]**; **Vishwanath Vs. Kisan** reported in **[2004(2) Bom.C.R. 399]**; **Shripati Vs. Goroba** reported in **[2008(6) Mh.L.J. 707]**. **Designers Co-operative Housing Society Vs. Uddhav** reported in **[2010(6) Mh.L.J. 40]**, **Ramnath Vs. Shamrao** reported in **[2010(6) Mh.L.J. 737]**, **Hiralal and others Vs. Bhikari and others**, reported in **[1973 Mh.L.J. 500]**.

15. In the case at hand, undisputedly plaintiff is elder

sister of defendant No.1. Defendant No.2 is their mother and defendants No.3 to 5 were minor sons of defendant No.1. Even the execution of agreement of sale dated 22.1.1972 (Exh.104) is not disputed in between the parties. After going through the evidence of plaintiff Padmavati (P.W.1), it becomes clear that, she has led sufficient foundation for leading secondary evidence on the ground that original document of agreement was lost before filing of the suit. Only because plaintiff did not publish notice in newspaper or she did not lodge report to police station, her testimony regarding loss of document during travel cannot be doubted.

16. After going through the agreement of sale 22.1.1972 (Exh.104), it emerges that, it was executed by defendants No.1 to 5 for total consideration of Rs.40,000/- and out of that amount, an amount of Rs.32,200/- was paid by plaintiff by depositing Rs.20,747=55 in the Loan Account of defendant No.1 in three different Banks and by depositing Rs.3394=77 in Regular Darkhast No.27/1991 pending before the Civil Judge, Senior Division, Shrigonda in execution petition filed by Anusayabai Shahajirao Wable against the defendant No.1. Amount of Rs.8057=68 was paid to the defendant No.1 in cash. The balance amount of Rs.7800/- was to be paid before the Sub-Registrar at the time of

registration of the sale deed, which was to be executed within three months from the date of execution of the agreement. This agreement was signed by defendants No.1, 2 and on behalf of defendants No.3 to 5, their mother Ashabai Panditrao Wable as guardian.

17. Plain reading of this agreement of sale (Exh.104) clearly indicates that it was only agreement of sale and not a document of security for hand loan. Therefore, onus shifts on defendant No.1 to prove that the document was obtained by plaintiff as security for hand loan.

18. However, except bare allegation in deposition, defendant No.1 has not brought on record any reliable circumstance, which even remotely indicates that the true nature of the transaction was loan transaction and the document was obtained as security for hand loan. On the other hand, by examining Laxman Thopte (P.W.2), plaintiff has also proved Nokarnama dated 23.1.1972 executed by defendant No.1 in favour of plaintiff (Exh.89). Even defendant No.1 Pandit Wable (P.W.1) has admitted the execution of "Nokarnama" (Exh.89) in his cross-examination. After going through the Nokarnama (Exh.89), it reveals that, under this document, the defendant No.1 has also admitted

the delivery of possession of the suit land to the plaintiff with standing crop and under the terms of this document, he agreed to look after the suit property as servant of plaintiff in lieu of payment of Rs.500/-. Execution of this Nokarnama supports the case of plaintiff that the nature of the transaction was only agreement of sale. Was the document (Exh.104) obtained as security for loan, then execution of Nokarnama (Exh.89) would have become redundant. Thus, this Nokarnama (Exh.89) also falsifies the contention of defendant No.1 that true nature of the transaction was hand loan transaction and agreement of sale was executed as security for loan.

19. In the circumstances, after going through the entire oral and documentary evidence, we are fully satisfied that the defendant No.1 miserably failed to prove that the plaintiff obtained the agreement of sale dated 22.1.1972 as a security for loan. On the other hand, plaintiff has duly proved that defendants No.1 to 5 agreed to sell the suit land for total consideration of Rs.40,000/- and on the date of agreement received earnest amount of Rs.32,200/-. As learned Advocate for the appellant has fairly admitted possession of plaintiff over the suit land, we need not consider that point again.

20. To get decree of specific performance, plaintiff has to comply Section 16(C) of Specific Relief Act, 1963. Section 16(C) of Specific Relief Act reads as under :

"16. Personal bars to relief:- Specific performance of a contract cannot be enforced in favour of a person :-

(a) . . . . .

(b) . . . . .

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

21. Bare glance at Section 16(c) of the Specific Relief Act makes it clear that plaintiff must aver and prove that she was all along ready and willing to perform her part of the contract or she has already performed her part of contract.

22. In the case at hand, in para 6 of the plaint, plaintiff has averred in clear words that, she was always ready and willing to perform her part of the contract. In the oral evidence also Padmavati (P.W.1) has deposed that, for

number of times she requested the defendant No.1 to execute registered sale deed, however, he avoided for one and other reason. The attitude of defendant No.1 that he obstructed possession of plaintiff over the suit land so also he claimed possession of the suit land by denying the true nature of agreement of sale indicates that he was not ready to execute registered sale deed as agreed. Even before institution of the suit, plaintiff issued two public notices in newspapers. In the first notice, she called objections from third persons after execution of agreement of sale and in second notice, she expressed readiness and willingness to obtain registered sale deed and made aware third persons not to make any transaction with defendant No.1 in respect of the suit land (Exh.90 and Exh.91). In addition to this, as per terms of the agreement, the part to be played by plaintiff in the said transaction is to make payment of Rs.7800/- to the defendants only on the date of execution of the sale deed. Thus, till execution of the sale deed, no duty lies on plaintiff to be performed as part of her contract. In the circumstances, we have no hesitation to hold that plaintiff has duly proved that she has averred and proved her readiness and willingness to perform her part of the contract and thereby complied Section 16(C) of the Specific Relief Act.

23. In view of the discussion, the plaintiff has duly proved that on 22.1.1972, defendants agreed to sell the suit land to the plaintiff after receiving earnest amount of Rs.32,200/- out of agreed consideration of Rs.40,000/-. Plaintiff has also proved her readiness and willingness to perform her part of contract. Therefore, now question to be answered is whether discretion of granting decree for specific performance can be exercised in favour of plaintiff or not? No doubt, in the evidence of defendant No.1 Pandit Wable (D.W.1), by way of answer to Court Question, defendant No.1 has brought on record that except the suit land no other land is available for him. As observed above, learned counsel for the appellant heavily relied on this contention of defendant No.1 and requested this Court not to exercise discretion in favour of the plaintiff.

24. However, it cannot be ignored that, plaintiff, who is sister of defendant No.1, has paid substantial large amount of Rs.32,200/- to the defendant No.1 on 22.1.1972 when he was heavily under the pressure of Bank loans and decree passed by Civil Court. Defendant No.1 has also admitted in his cross-examination that, his one third share in the suit land would have been sold out in the Court auction which was asked by

Anusayabai Wable in Execution Petition filed in Civil Court, Shrigonda. He also admits that, "It is true that, if at that time the suit agreement had not taken place, one fourth share from suit land would have been sold through Court and the Banks and Society were also insisting for repayment of loan". Thus, by accepting the proposal of defendant No.1 regarding sale of the suit land, the plaintiff had in fact saved the suit land from Court auction for repayment of various loans borrowed by defendant No.1. However, circumstances indicate that, defendant No.1 did not keep his word and even denied the true nature of the agreement of sale transaction. Defendant No.1 is the person who had conveniently forgotten the helping hand extended by his sister when he was in dire need of money due to indebtedness. Thus, considering this overall unfair conduct of defendant No.1 and long standing possession of plaintiff over the suit land, even the balance of hardship tilts in favour of plaintiff and not in favour of defendant No.1.

25. Before parting with the judgment, we must make it clear that, the technical objection raised by plaintiff that on the date of agreement of sale, plaintiff was not agriculturist, holds no water as in the cross-examination of defendant (D.W.1), it emerges that since 1952 plaintiff is in possession

of agricultural land purchased from Fattesing Wable. The three authorities relied on by learned counsel for appellants are distinguishable on facts because, in "Hemant Vs. Ganesh" (cited supra), possession was not delivered to the plaintiff and even the area of the land to be sold was not clear. There was no substantial act from plaintiff and even there was no financial loss to the plaintiff. Under those peculiar circumstances, the decree for specific performance was refused by the Apex Court.

26. In "Ramesh Vs. Asruddin" (cited supra), neither there was pleading nor evidence regarding readiness and willingness of plaintiff to perform his part of the contract. Considering that circumstance, the specific performance was refused.

27. In "Satish Kumar Vs. Karan Singh" (cited supra), the genuineness of the contract was doubtful and it was unenforceable, therefore, specific performance was refused. Rherefore, ratio of these authorities is not applicable in the case at hand because plaintiff was all along ready and willing to perform her part of contract and she is in possession of the suit land for more than 20 years. Therefore, obviously discretion exercised by learned Single Judge in favour of

plaintiff in First Appeal is just and proper.

28. Before parting with the judgment, we must refer the authorities relied by learned counsel for the respondent No.1 in "Narayan Vs. Uday Kumar" (supra); "Shri Narayan & others Vs. Shridhar" (supra); "Vishwanath Vs. Kisan" (supra); "Shripati Vs. Goroba" (supra); "Designers Co-operative Housing Society Vs. Uddhav" (supra); "Ramnath Vs. Shamrao" (supra) and "Hiralal and others Vs. Bhikari and others" (supra). In these cases, the Division Bench of this Court, Single Bench of this Court and even the Apex Court have explained trite law that the transaction entered into by natural guardian on behalf of minor is not void ab initio, it can be avoided by minor if he can establish that guardian has exceeded his authority. The joint Hindu family by itself is a legal entity, capable of acting through its Karta and other members of the family in management of Joint Hindu Family. Section 8, in view of express terms of Section 6 and 12 of Hindu Minority and Guardianship Act, 1956 would not be applicable where Joint Hindu Family property is sold/ disposed of by Karta involving undivided interest of minor in the said Joint Hindu Family.

29. However, the ratio of all these authorities is not

applicable in the case at hand for the simple reason that in written statement of defendants No.3 to 5, they have denied that defendant No.1 is Karta of their joint family. On the other hand, as observed above, in the year 1966, suit for partition was filed by defendants No.3 and 4 against their father defendant No.1 and in 1969, even decree for partition was passed. Therefore, defendant No.1 cannot act as Karta of the joint family of defendants No.3 to 5. Thus, the authorities relied on by Shri Shirsath, learned counsel for the respondent are not applicable in the case at hand under these distinguishable facts and circumstances of this case.

30. However, as observed above, at the first part of the judgment that defendants No.3 to 5 have not challenged the decree for specific performance of the contract passed by first appellate Court and it has reached to finality against them. Thus, otherwise also, the defence which is available to defendants No.3 to 5 cannot be availed by defendant No.1 in this Letters Patent Appeal.

31. In the result, we hold that the decree passed by learned Single Judge in First Appeal No.953/1980 (First Appeal no.757/1989) for specific performance of the contract of sale is correct, proper and needs no interference. This

Letters Patent Appeal being devoid of merit, deserves to be dismissed. Hence, we pass the following order:

**ORDER**

- (i) The Letters Patent Appeal is dismissed with costs.
- (ii) In view of dismissal of the Letters Patent Appeal, Civil Applications are disposed of.

( SUNIL K. KOTWAL )  
JUDGE

( T.V. NALAWADE )  
JUDGE

fmp/