

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

927 SECOND APPEAL NO.235 OF 2019

Sandip Dattatraya Wakale and Others .. Appellants

Versus

Sau. Kantabai Eknath Wagh and Others .. Respondents

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Mr. V.D. Sapkal, Senior Counsel i/b. Mr. Shriraj R. Wakale, Advocate
for Appellants

Mr. M.R. Sonawane, Advocate for Respondent Nos.1 and 2

Mr. N.B. Narwade, Advocate for Respondent No.5-B

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WITH

**CA/6390/2019 IN SA/235/2019
WITH CA/5152/2019 IN SA/235/2019**

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CORAM : MANGESH S. PATIL, J.

Reserved on : 01-03-2022

Pronounced on : 02-03-2022

PER COURT :

. Heard the learned advocates for both the sides on the
point of admission.

2. The respondents are the original plaintiffs, who filed a
suit seeking a declaration that the agreement of sale executed by
them in favour of the appellants and the Power of Attorney executed
by original plaintiff no.5 – Dashrath in favour of the appellants were
not to be acted upon and be declared void. Apparently, it was a suit

under Section 31 of the Specific Relief Act whereby they were seeking to cancel the instrument being void or voidable.

3. The appellants contested the suit and asserted that the respondents – plaintiffs had agreed to sell the suit property by receiving earnest money and the transaction was witnessed by the agreement of sale which was duly registered.

4. The trial court dismissed the suit. By the judgment and order under challenge, the appellate court has reversed the decision and has decreed the suit.

5. The inconsistent conclusions of the courts below would give rise to substantial questions of law. The Second Appeal stands **admitted** on following substantial questions of law:

(a) Whether the lower appellate court was justified in reversing the judgment and order of the trial court ignoring the relevant and material facts and circumstances ?

(b) Whether the lower appellate court without there being sufficient and cogent evidence was justified in allowing the respondents to take exception to registered agreement of sale ?

(c) Whether the lower appellate court has grossly erred in recording the conclusion that the suit was within limitation when the relief of declaration was being claimed after six years of execution of the agreement of sale and the Power of Attorney?

6. Taking into account the nature of the dispute, both the sides are restrained from creating any third party interest in the suit property till decision of the Second Appeal.

7. Civil Application Nos.6390 of 2019 and 5152 of 2019 are disposed of.

(MANGESH S. PATIL)
JUDGE

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Gajanan