

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.3058 OF 2021
IN
SECOND APPEAL NO.334 OF 2021
WITH
SECOND APPEAL NO.334 OF 2021**

Motilal Hemavadan Sujan

...Appellant

Versus

Smt. Channamma Koti Poojari and
Ors.

...Respondents

...

Mr. Pradeep Thorat with Ms Aditi Naikare i/b. Mr. P.J. Ramchandani for
the Appellant.

None for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 10th OCTOBER, 2023.

P.C.:-

1. The Appellant has challenged the judgment and decree dated 04/08/2021 whereby the learned District Judge, Palghar, allowed the appeal and set aside the judgment and decree dated 24/03/2014 passed by the learned Civil Judge, Senior Division, Palghar, in Special Civil Civil Suit No.36 of 2009.

2. The Second Appeal is admitted on the following substantial questions of law:-

A. Whether the Suit filed by the Appellant for Specific

Performance can be said to be barred by Order II Rule 2 of CPC when the earlier instituted Suit for Injunction was still pending on the date of filing of the present Suit?

B. Whether the Suit for specific performance can be said to be barred by Order II Rule 2 of CPC when the cause of action for filing the present Suit has arisen after filing of the Suit for Injunction?

C. Whether the suit for specific performance can be said to be barred by limitation in view of the admission given by the Defendants that the suit agreement has never been terminated by them?

D. Whether the Lower Appellate Court was justified in rejecting refund of the earnest money received by the predecessor of the Defendants from the Appellant/Plaintiff while refusing the decree for Specific Performance in view of provisions of Section 22 of the Specific Relief Act, 1963?

3. Issue notice to the Respondents.

INTERIM APPLICATION NO.3058 OF 2021:-

4. Since the second appeal is admitted, the Respondents are restrained from creating any third party right in respect of the suit property, pending hearing of the appeal.

5. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)