

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

SECOND APPEAL NO. 313 OF 2022

SANJAY S/O SURYAKANT JAISWAL AND ANOTHER

...**VERSUS**...

MAHADEO S/O RAMJI PADOLE AND OTHERS

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

Court's or Judge's order

Shri S.V.Purohit, Advocate for appellants.

Shri A.S.Dhore, Advocate for respondent no. 7/Caveator.

CORAM : SMT. M. S. JAWALKAR,J.

DATE : 29th MARCH, 2023

Heard learned counsel for the appellants as well as respondent no. 7.

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

“i) Whether the judgment and decree passed by learned lower Appellate Court decreeing the suit granting specific performance of contract by reversing the judgment and decree passed by learned Trial Court against defendant no. 6 who was admittedly not a party to the agreement of sale, is erroneous, illegal, perverse and without jurisdiction ?

ii) Whether in the absence of plaintiff's prayer seeking declaratory relief that the termination of agreement was bad in law, suit for specific performance was maintainable ?

iii) Whether the finding that the plaintiff was ready and willing to perform his part of contract, is perverse ?

iv) *Whether in the fact of finding recorded by learned Trial Court that defendant no. 6 was not party to the agreement dated 30/06/2004 and also admitted position on record that defendant no. 6 was not party to the agreement, whether decree of specific performance could have been passed against defendant no. 6?*

v) *Whether the finding that the plaintiff was put in possession of property on basis of unregistered agreement of sale, is perverse ?”*

3. Issue notice to the respondents except respondent no. 7 on for final hearing, returnable on 19/04/2023.
4. R & P be called.
5. List the matter for final hearing on 19/04/2023 at 02.30 p.m.

CIVIL APPLICATION (CAS) NO. 387/2023

As the appeal is admitted, interim relief is granted in terms of prayer Clause (A).

(Smt. M.S. Jawalkar, J.)