

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

**SECOND APPEAL NO.362 OF 2023
WITH
INTERIM APPLICATION NO.20120 OF 2022
IN
SECOND APPEAL NO.362 OF 2023**

Ganpat Rangrao Ghorpade & Ors.

....Appellants/Applicants

V/S

Rajendra Dinkar Pawar
since deceased through LRs.

Manisha Rajendra Pawar & Ors.

....Respondents

Mr. Pinto R. Yadav *for the Appellants/Applicants.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 16 APRIL 2024.**

P.C.:

1 By this Appeal, Appellants challenge judgment and decree dated 21 February 2022 passed by District Judge, Satara in Regular Civil Appeal No.227 of 2015. The First Appellate Court has allowed the Appeal filed by the Plaintiff and has set aside the decree dated 23 July 2015 passed by the Joint Civil Judge Junior Division, Koregaon in Regular Civil Suit No.101 of 2011. The First Appellate Court has decreed the suit and has directed Appellants/Defendants to specifically perform the contract for sale of suit land in favour of the Plaintiff.

2 I have heard Mr. Yadav, the learned counsel appearing for the Appellants.

3 It appears that Appellants/Defendants failed to file Written Statement nor cross-examined the Plaintiff. Thus contents of the plaint as well as the evidence adduced by the Plaintiff before the Trial Court went uncontroverted. Plaintiff entered the witness box and deposed in favour of execution of the agreement for sale dated 5 June 2009. Defendants never disputed execution of the said agreement. Despite this position, the Trial Court expected the Plaintiff to examine witnesses to the agreement. In my view, in absence of any dispute about execution of the agreement by Defendants, leading of evidence by the Plaintiff in support of execution of the agreement was sufficient and was not necessary for the Plaintiff to lead evidence of the witnesses. The Trial Court thus committed a manifest error in holding that execution of the agreement for sale was not proved. Since the finding recorded by the Trial Court on the aspect of execution of the agreement for sale itself is erroneous, the rest of the findings of the Trial Court on other issues are automatically rendered unsustainable. In my view the First Appellate Court has rightly corrected the error committed by the Trial Court. The First Appellate Court has held that execution of the agreement for sale dated 5 June 2009 is proved. It appears that before filing of the Suit, Plaintiff had served notice dated 30 May 2011 on the Defendants calling them upon to specifically perform the contract. Receipt of the said notice is also not disputed by the Defendants. Thus readiness and willingness on the part of the Plaintiff was clearly

established. In that view of the matter, no serious error can be traced in the decree passed by the First Appellate Court. No substantial question of law is involved in the Appeal. The Second Appeal is accordingly **rejected**.

4 In view of the disposal of the Second Appeal, nothing would survive in the Interim Application. The same is disposed of.

(SANDEEP V. MARNE, J.)