

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

**SECOND APPEAL (ST.) NO. 18398 OF 2022
WITH
INTERIM APPLICATION NO. 13934 OF 2023
WITH
INTERIM APPLICATION NO. 13939 OF 2023
WITH
INTERIM APPLICATION NO. 13937 OF 2023**

1. Chintaman Hasha Surosh
And Ors. . . .Appellants
v/s.
1. Sau. Alka Vijay Malbari & Ors.Respondents

**WITH
SECOND APPEAL NO. 174 OF 2023
WITH
INTERIM APPLICATION NO. 1980 OF 2023
WITH
INTERIM APPLICATION NO. 4481 OF 2023
WITH
INTERIM APPLICATION NO. 4480 OF 2023**

Raju Purshottam NarsinghaniAppellant
V/s.
Alka Vijay Malbari and Ors.Respondents

Mr. Ashwin Pimpale, *for the Appellants.*

Mr. Rajesh S. Datar *a/w. Mr. Akshay J. Kandarkar, for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 8 February 2024.

P.C. :

1. These Appeals are filed challenging the Judgment and Decree dated 31 March 2022 passed by the District Judge-2, Kalyan in Regular Civil Appeal No. 73 of 2014 by which the Appeal filed by Original Defendant No.9 came to be dismissed and the Decree dated 26 April 2014 passed by the Civil Judge Senior Division, Kalyan in Special Civil Suit No. 420 of 2008 is confirmed.

2. It appears that only Defendant No.9 got aggrieved by the Decree dated 26 April 2014 and filed Regular Civil Appeal No. 73 of 2014. The other land owners being Defendant Nos.1 to 8 thought it prudent not to challenge the decree of the Trial Court before the first Appellate Court. However, after Defendant No.9's Appeal was rejected by the first Appellate Court, some of the land owners have filed Second Appeal (St.) No. 18398 of 2022. It is highly questionable as to whether Second Appeal (St.) No. 18398 of 2022 can be filed by the Appellants who chose not to challenge the Decree before the first Appellate Court.

3. Be that as it may, I have heard the submissions canvassed by the learned counsel appearing for the Appellant in Second Appeal No.174 of 2023. The suit was filed by the plaintiff for specific performance of the Agreement for Sale dated 12 July 2007. Defendant Nos.1 to 8

denied execution of Agreement for Sale dated 12 July 2007. Plaintiff examined himself to prove execution of the Agreement. Additionally, the Plaintiff also examined Notary in whose presence the agreement was executed. The Plaintiff also relied upon various vouchers under which payments were made to the land owners in pursuance of the Agreement for Sale dated 12 July 2007. The defence of Defendant Nos.1 to 7 was stretched to such an extent that Defendant No.3 who deposed on behalf of the other Defendants went to the extent of denying his own signature on summons, vakalatnama and Written Statement. The Trial Court was thus left with no admitted signature on record with which it could have directed the signature on the agreement to be compared through an Handwriting Expert. Considering the conduct of Defendant No.3 in denying his own signatures on summons, vakalatnama and Written Statement, as also the evidence led by the Plaintiffs in support of execution of the Agreement, the Trial Court has recorded a finding of fact that execution of the agreement is proved. The said finding of fact is upheld by the first Appellate Court after re-appreciating all the evidence on record. Whether the Agreement is executed or not, is the disputed question of fact which has been answered by the Trial and the First Appellate Court against the Appellant in Second Appeal No. 174 of 2023. No substantial question of law is involved in both the Appeals. Both the Appeals are rejected.