

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 129 OF 2024
WITH
CIVIL APPLICATION NO. 28 OF 2024**

Shri Yusufkhan Kamruddin Khatib ... Appellants/Applicants
and Another

Vs.

Shri Fatthekhan Ghudulal Bhaldar ... Respondents
and Another

Mr. Padmanabh D. Pise a/w. Mr. Sejal A. Hariyan for the
Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATE : 11th DECEMBER 2024

ORDER :

1. Heard learned counsel for the appellants. The second appeal is
admitted on the following substantial questions of law :

- (i) Whether the findings recorded by both the courts on
execution of the suit agreement amounts to incorrect
appreciation of the pleadings and evidence on record ?

(ii) Whether both the courts erred in not accepting the execution of the suit agreement as an agreement for sale by ignoring that the suit document was a registered document supported by plaintiffs oral evidence including examining attesting witness ?

(iii) Whether both the courts erred in not taking into consideration that the evidence led by the plaintiffs was not rebutted by the defendants by cross examination and by leading any evidence on behalf of the defendants ?

(iv) Whether both courts erred in not taking into consideration the compromise pursis at Exhibit 72 which supports the plaintiffs contention on execution of the agreement for sale and the terms and conditions agreed between the parties ?

(v) Whether the reasons recorded by both the courts in refusing to grant specific performance would be sustainable in view of not recording any findings on the other issues with respect to readiness and willingness and on the binding effect of the execution of the sale deed in favour of defendant no.2 during the subsistence of the agreement in favour of the plaintiffs ?

2. In addition to court notice, learned Advocate for the appellants to serve the respondents by private service and file service affidavit.
3. Call for record and proceedings.
4. Printing is dispensed with.
5. Learned Advocate for the appellants shall file private paper book within one year from today.

Civil Application No. 28 of 2024

6. Though application is listed on board, office has not placed on record copy of the application. Copy of the application tendered by the learned counsel for the applicant is taken on record.
7. Rule on interim relief in terms of prayer clause (c) is made returnable on 5th March 2025.
8. In addition to court notice, learned Advocate for the applicants to serve the respondents by private service and file service affidavit before the next date.
9. Till the next date there will be ad-interim relief in terms of prayer clause (c).

[GAURI GODSE, J.]