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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 632 OF 2024
WITH
INTERIM APPLICATION NO. 13735 OF 2024
IN
SECOND APPEAL NO. 632 OF 2024**

Indubai Govind Padwal since deceased ... Appellants/Applicants
through her legal heirs and Ors

vs.

Akkatai Prashram Padwal and Anr ... Respondents

Mr. P.D. Dalvi a/w. Mr. Sandeep Kocharekar, for
Appellants/Applicants.

CORAM : GAURI GODSE, J.

DATED : 9th DECEMBER 2024

ORDER:

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

I) When the plaintiffs' prayer for specific performance was dismissed on the ground of limitation and readiness and willingness, whether the plaintiffs can be held entitled for protection under Section 53A of the Transfer of Property Act,

1882 ('said Act') in the absence of any supporting evidence that the plaintiffs were put in possession pursuant to the agreement for sale?

II) In the facts and circumstances, whether the plaintiffs' suit could have been partly decreed for the ancillary relief of protection of possession by giving benefit under Section 53A of the said Act, when the substantive prayer for specific performance was rejected?

III) In the absence of any registered agreement for sale and in the absence of any evidence that the plaintiffs was put in possession pursuant to the agreement for sale, whether the impugned decree would be sustainable in view of the provisions of Section 53A of the said Act?

2. In addition to Court notice, learned advocate for the appellants to serve the respondents, by private notice and file affidavit of service.
3. Call for records and proceedings.
4. Printing is dispensed with.
5. Learned advocate for the appellants shall file private paper-book within a period of one year from today.

INTERIM APPLICATION NO. 13735 OF 2024.

6. Rule on interim relief in terms of prayer clause (a) is made returnable on 3rd March 2025.

7. In addition to Court notice, learned advocate for the applicants to serve the respondents, by private notice and file affidavit of service before the next date.

(GAURI GODSE, J.)