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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 589 OF 2018
WITH
CIVIL APPLICATION NO. 1368 OF 2018
IN
SECOND APPEAL NO.589 OF 2018
WITH
SECOND APPEAL NO. 198 OF 2020
WITH
INTERIM APPLICATION NO. 7211 OF 2024
IN
SECOND APPEAL NO. 198 OF 2020
WITH
CIVIL APPLICATION NO. 186 OF 2020
IN
SECOND APPEAL NO. 198 OF 2020**

Anwar Ismail Majgaonkar and Others ... Appellants

Vs.

Ayub Adam Hodekar ... Respondent

Mr. Shriram Kulkarni a/w. Mr. Sachin Chavan for the Appellant in
SA/589/2018 and SA/198/2020.

Mr. Sachindra B. Shetye a/w. Mr. Dhanashri Mondkar, Mr. Akshay
Pansare and Mr. Nipun Sawane for Respondent No. 1 in
SA/589/2018 and SA/198/2020.

CORAM : GAURI GODSE, J.

DATE : 15th JULY 2024

ORDER :

1. Heard. Second Appeals are admitted on the following
substantial questions of law :

- (i) Whether the defendant was entitled for specific performance of the contract as prayed in the counter claim in the absence of any specific prayer for specific performance of a concluded contract ?
- (ii) Whether the document at Exhibit 75 could be termed as an agreement for sale ?
- (iii) Whether the document at Exhibit 75 was compulsorily registered in view of Sub-Section (1A) of Section 17 of The Registration Act, 1908 ?
- (iv) Whether the counter claim for specific performance could have been decreed without there being any declaration on the validity and subsistence of the agreement at Exhibit 75 which was terminated by the plaintiff by notice dated 2nd July 2007 ?
- (v) Whether the plaintiff was entitled to seek decree for removal of construction and possession of the suit property in view of termination of the agreement at Exhibit 75 ?
- (vi) Whether the construction made by the defendant on the suit property can be said to be an authorised construction pursuant to any valid permissions ?

2. Mr. Shetye waives notice for respondent no.1.
3. Call for record and proceedings.
4. Printing is dispensed with.
5. Appellant shall file private paper book within one year from today.
6. To be heard along with connected Second Appeal No. 568 of 2016.

Civil Application No. 186 of 2020 in Second Appeal No. 198 of 2020

7. This application is for stay to the execution and operation of the impugned Judgment and decree passed in counter claim for specific performance of the contract. The Second Appeal is already admitted on the question of law as recorded in the order. Hence, the decree for specific performance is required to be stayed.
8. During the pendency of the Second Appeal, there will be interim stay in terms of prayer clause (a).
9. During the pendency of the second appeal, the parties shall not create any third party interest in the suit property.

[GAURI GODSE, J.]