



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 495 OF 2024

(Jitendra s/o Kisan Rathod
Vs.
Shekhar Rambhau Kanoje & Anr.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S.S. Das, Advocate for the Petitioner.
Mr. P.S. Chawhan, Advocate for the Respondents.

CORAM: N.R. BORKAR, J.

DATED : 2nd AUGUST, 2024

This Petition takes exception to the order dated 07.11.2023 passed by Jt. Civil Judge Senior Division, Pusad below Exh.107 in Spl.C.S.No.29/2014.

2. The Petitioner herein has filed a suit for specific performance of contract based on agreement of sale dated 02.07.2010 allegedly executed by the Respondents herein.
3. The Petitioner in support of his case, has examined himself and his mother who was attesting witness on the said agreement of sale.
4. By the order impugned, the Trial Court has rejected the application filed by the Petitioner to examine other attesting witness on the agreement of sale namely Satish Shivajirao Shinde and other witnesses who according

to the Petitioner were present at the time of execution of alleged agreement of sale.

5. I have heard the learned Counsel for the Petitioner and learned Counsel for the Respondents.

6. The learned Counsel for the Petitioner submits that, Respondents had denied the execution of agreement of sale, and therefore, it was necessary to examine independent attesting witness and other witnesses who were present at the time of execution of agreement of sale, however the same was not done by the earlier Advocate representing the Petitioner before the Trial Court. It is submitted that, considering the facts and circumstances of the case, the Trial Court ought to have allowed the application.

7. On the other hand, the learned Counsel for the Respondents submits that, the suit is at the stage of final argument. It is submitted that, the Petitioner cannot be permitted to fill up the lacunas, and therefore, the Trial Court has rightly rejected the application.

8. Considering the facts and circumstances of the case, the Trial Court ought to have allowed the Petitioner to examine the other attesting witness namely Satish Shivajirao Shinde. The order impugned to that extent is therefore quashed and set aside.

9. The Trial Court shall permit the Petitioner to examine other attesting witness on the agreement of sale i.e. Satish Shivajirao Shinde.

10. The Petition is **disposed** of in the above terms. No costs.

11. Pending application/s, if any, shall stand disposed of accordingly.

(N.R. BORKAR, J.)

SD. Bhimte