



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO.18 OF 2025

KHUSHALRAO S/O VITTHALRAO GIRHE

Vrs.

RAMBHAU S/O SITARAM BAGDE

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M. R. Joharapurkar, Advocate for appellant.

Shri Y. S. Nikam, Advocate h/f Shri N. B. Bargat, Advocate for
respondent-sole.

CORAM: ROHIT W. JOSHI, J.

DATE : 22/04/2025.

1. The second appeal is **Admitted** on the
following substantial questions of law :-

“i] Admittedly, out of total sale consideration, Rs.2,50,000/- when the purchaser - plaintiff had paid sum of Rs.1,50,000/- on the date of agreement i.e. on 04/10/2005 and filed suit for specific performance of contract on 28/07/2006 i.e. within a period of two months from the date stipulated for execution of sale deed which is 31/05/2006, can it be said that the plaintiff was not ready and willing to perform his part of contract ?

ii] Having regard to the broadly accepted definition of term “cause of action” which means bundle of facts which would entitle a plaintiff to seek relief from Court in accordance with law, can it be said that the cause of action in the earlier suit for perpetual injunction against forcible dispossession and subsequent suit for specific performance

of contract was the same and consequently, can it be said that the subsequent suit for specific performance of contract was barred by Order 2 Rule 2 of the Code of Civil Procedure, 1908 ?”

2. Shri Y. S. Nikam, advocate h/f Shri N. B. Bargat, learned counsel waives service of notice for respondent-sole.

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3. In view of the fact that the second appeal is admitted, it is necessary to preserve the suit property and therefore, the respondent is restrained from creating any third party interest over the suit property or to part with the possession of the same in favour of the third party, till final disposal of the appeal.

4. It also needs to be mentioned that the suit for perpetual injunction filed by the appellant bearing Regular Civil Suit No.46/2006 has been dismissed holding that the appellant – plaintiff is not in possession of the suit property, he shall not disturb the possession of the respondent - defendant over the suit property, till the final disposal of the appeal.

5. The civil application is disposed of accordingly.

[ROHIT W. JOSHI, J.]