



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

WRIT PETITION NO. 964 OF 2025

Ankush Kisan Aglave, Age: 51 years, Occ: Service and
Agriculturist, R/o Panchali Layout, Borda, Taluka Warora,
District Chandrapur.

PETITIONER

VERSUS

1. Asha Devidas Khandalkar, Aged 58 years, Occ: Agriculturist,
R/o Aakapur, Tahsil Maregaon, District Yavatmal.
2. Vaishali @ Manjusha Rajkumar Bodhe, Aged 38 years,
Occ: Agriculturist, R/o Aakapur, Tahsil Maregaon,
District Yavatmal.
3. Manisha Rajendra Hepat, Aged 40 years, Occ: Agriculturist,
R/o Hatwanjri, Tah. Maregaon, District Yavatmal.
4. Ashwini Raju Dhengle, Aged 34 years, Occ: Agriculturist,
R/o Kolgaon, Tah. Maregaon, District Yavatmal.
5. Savita Dipak Dhengle, Aged 32 years, Occ: Agriculturist,
R/o Aadheli, Tah. Warora, District Chandrapur.

RESPONDENTS

Shri A.V. Bhide, counsel for the petitioner.
Shri Y.R. Kinkhede, counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : FEBRUARY 26, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of
the learned counsel for the parties.

2. By this petition the petitioner has challenged the order dated
13.03.2024 passed by the trial Court allowing the application for
permission to lead secondary evidence.

3. The petitioner is the original plaintiff who has filed Special Civil
Suit no.11 of 2019 for specific performance of contract in which the
defendants appeared and filed their written statement and thus the suit is

being contested on merits. During the course of evidence, the defendants filed application for permission to lead secondary evidence with respect to an unregistered agreement to sell dated 18.05.2016 which came to be allowed by order dated 13.03.2024. This order dated 13.03.2024 is subjected to challenge by way of instant petition.

4. Shri A.V. Bhide, learned counsel for the petitioner vehemently submitted that the trial Court has failed to consider the crucial aspect that the document of agreement to sell dated 18.05.2016 is not in existence and therefore there was no question of allowing permission to lead secondary evidence. By inviting attention to the signature of the plaintiff on the photocopy of the agreement dated 18.05.2016 and his signature appearing on another unregistered agreement to sell of the same date, he submitted that the two signatures are not tallying and in view of this, insistence of the defendants for leading secondary evidence is an attempt to prolong the litigation.

5. Per Contra, Shri Y.R. Kinkhede, learned counsel for the respondents vehemently opposed the petition and submitted that the application for leading secondary evidence deserved to be allowed as the original agreement to sell dated 18.05.2016 is in possession of the plaintiff who failed to produce the same despite notice to produce the document was given by the defendants. He also submitted that photocopy of the said document is already filed on record and it is exhibited during evidence of plaintiff at Exhibit 58. He further submitted that the plaintiff has not

disputed the existence of said document as he failed to dispute it in response to the notice dated 10.08.2017 and as such for complete adjudication of the controversy, the defendants deserve an opportunity to lead secondary evidence. In support of his submissions, he relied on the judgment of the Hon'ble Supreme Court in ***Vijay Versus Union of India & Others*** [(2023) 17 SCC 455] and submitted that a party is entitled to adduce secondary evidence when the original document is not in possession of that party.

6. Rival contentions thus fall for my consideration.

7. The document of agreement to sell dated 18.05.2016 is an important document considering the suit seeking specific performance of agreement to sell dated 18.05.2016. In view of the controversy involved in between the parties, it appears that two separate agreements were signed on the same date i.e. 18.05.2016 mentioning different amounts of consideration out of which one agreement was registered whereas other document was unregistered. After the dispute arose, the defendants raised contentions about actual value of sale consideration being shown in the unregistered document and therefore prayed for an opportunity to lead secondary evidence in that regard. The defendants have specifically pleaded in their written statement dated 09.09.2019 about another agreement to sell of the same date i.e. 18.05.2016 mentioning the details of sale consideration. It has also to be noted that the defendants have given a notice to produce the document and the plaintiff was called upon

to produce the document however the document was not produced on record. The defendants have also filed notice to admit the documents pursuant to which the document was not admitted. In this background, the application filed by the defendants at Exhibit 45 for permission to lead secondary evidence with respect to the unregistered agreement to sell dated 18.05.2016 came to be decided by the trial Court.

8. While deciding the application, the trial Court has given due consideration to the contentions of the defendants that the original document is in the custody of the plaintiff and he has not produced the said document despite an opportunity in response to notice to produce the document. Having regard to the controversy involved and the case put up by the defendants, I am of the firm opinion that for deciding the entire controversy involved in the suit, the defendants need to be granted an opportunity to lead secondary evidence. A perusal of the order passed by the trial Court reveals that due consideration is given to all the factual and legal aspects and the view taken by the trial court appears to be a plausible view.

9. Although the petitioner has raised objection about his signature on the said unregistered agreement dated 18.05.2016, it has to be noted that the issue about existence of signature of the plaintiff on the said document is the subject matter of adjudication in the suit. The plaintiff is entitled to raise objection and even apply for opinion of handwriting expert, if required.

10. Having regard to the entire controversy involved and considering the factual and legal aspects, I do not find any need to interfere with the discretionary order passed by the trial Court allowing the application for permission to lead secondary evidence. Considering the position of law as laid down by the Hon'ble Supreme Court in *Vijay* (supra), there is no perversity with the order passed by the trial Court. Hence the writ petition is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE