

**IN THE COURT OF DISTRICT JUDGE-6 AND**  
**ADDITIONAL SESSIONS JUDGE, NAGPUR.**

( Presided over by Smt. H.C. Shende, D.J.-6 )

Regular Civil Appeal No. : 126 of 2025.

**Sushilabai Jodharam Anandani since deceased  
through her legal heirs.**

// Versus //

**Abhimanyu Kukreja and five others**

**ORDER BELOW EXHIBIT 35**

( Passed on 03.05.2025 )

The present application filed by the appellant/legal heirs of original plaintiff by contending that, Special Civil Suit No. 1558/1996 was filed by her for specific performance of contract dated 18.12.1992 in respect of suit plot No. 60 out of layout in Khasra No. 23/1, 24/1 and 24/2, Mouza Jaripatka, Nagpur admeasuring 4800 sq.fts.

It is further contended that, respondent No. 2 appeared in the present appeal and has filed submission vide Exh.32 dated 03.04.2025 by stating that, he along with respondent No. 3 had sold the suit property to Smt. Lajwanti Abhimanyu Kukreja, wife of respondent No. 1 and possession of the property also been delivered. In view of Exh.32 filed by respondent No. 2, now it is become necessary to add subsequent purchaser namely Smt. Lajwanti Abhimanyu Kukreja as a party to the appeal for deciding the matter on merit.

2] In addition to the submission, the learned Advocate for the appellant has filed on record written notes of arguments wherein it has been contended that, during the course of

argument and through reply, false theory put up by the respondents, very casual reply was given, however, it is pertinent to note that, in the trial Court, the proposed respondent No. 7 had filed Exh.59 dated 14.02.2005 under Order I Rule 10 of the Code of Civil Procedure, 1908 for directing the plaintiff i.e. present appellant to implead her as a party defendant. The said application was dismissed for want of prosecution on 28.07.2005 and not on merit. The order also been mentioned in the written notes of arguments filed by the appellant.

It is further added by the learned Advocate for the appellant that, subsequently, vide application (Exh.138) dated 09.11.2010 the proposed respondent applied for restoration of application (Exh.59), however, the counsel who has filed Vakalatnama on behalf of respondent, failed to appear and the said application also came to be rejected on 03.01.2011. The recital of said order also been given.

It is further contended that, the above order dated 03.01.2011 passed by the 6<sup>th</sup> Jt. Civil Judge, Sr.Dn., Nagpur was the subject matter of challenge in the Writ Petition No. 5263 of 2011. However, the Hon'ble High Court considering overall record did not interfere into that order.

3] The learned Advocate for the appellant further added that, even otherwise, there is no merit in the reply filed by the respondent at Exh.45 because the appellant/original plaintiff is master of her suit and it is for her to decide against whom she wants to file the suit. The circumstance also been changed, as during pendency of the appeal, the suit property has been sold to propose respondent. The appellant want injunction

order against respondent No. 7 also from transferring or making any construction over the suit property. So, it is necessary to add the proposed respondent as a party in the litigation.

4] The proposed respondent has filed reply at Exh.45 and strongly resisted the application by mentioning that, before the learned trial Court vide list (Exh.143) dated 10.01.2011, it was brought on record of the trial Court that, the suit property was agreed to be sold to Smt. Lajwanti Abhimanyu Kukreja vide agreement of sale dated 31.01.1996. The copy of said agreement is also placed on record, but it is the present appellant who opposed the same and not impleaded Smt. Kukreja as a party. The suit proceeded ex-parte against defendant No. 1 against which he had presented Writ Petition No. 5226 of 2011 in which respondent No. 1 contended that, Smt. Lajwanti Kukreja who had agreed to purchase the suit property from respondent Nos. 2 and 3, still Smt. Kukreja not added as a party. Smt. Kukreja herself has filed application before the learned trial Court and even before the Hon'ble High Court through Writ Petition No. 5263 of 2011, but those were came to be rejected. However, the learned trial Court was pleased to dismiss the suit on merit by judgment and decree dated 27.02.2025. No attempt was made by the appellant to seek stay till hearing of appeal. Now every application and particularly the present application for adding Smt. Kukreja as a party cannot be allowed considering the earlier order which are binding on the Court.

5] Heard both the sides at length. Perused the record. The written notes of argument in detail along with orders submitted by the appellant/original plaintiff. It has only

submitted by respondent by filing their say at Exh.46 that Exh.35 was already argued, argument was already heard, so the same cannot be considered.

On perusing the facts mentioned by the parties, it is not denied by both that, the original suit i.e. Spl. Civil Suit No. 1558/1996 which was decided on 27.02.2025 was filed by the original plaintiff against the defendants and it was for specific performance of contract for the suit property mentioned in the suit. It has also not been denied by the present appellant that, initially the defendant and Smt. Kukreja herself has made an attempt to appear in the capacity of defendants in the matter. However, those applications were not accepted by the learned trial Court. According to the defendants, those were decided on merit, however, according to the appellant, those applications were not decided on merit. On perusal of the order filed with the submissions it appears to me that, at the time of passing order the Court observed that, the applicant and their counsel were absent and the application came to be rejected for want of prosecution and the orders not touch to the core subject of the suit and the property involved in the matter.

6] Apart from this all, at the time of suit, it was only put up before the Court that, the respondent Nos. 2 and 3 entered into an agreement of sale with Smt. Kukreja. However, when respondent No. 2 appeared in the present matter it has been made clear by them that, the property now sold to Smt. Kukreja and possession was also delivered. Now the earlier situation was very much different than the present one. At the time of trial of the original suit bearing Spl. Civil Suit No. 1558/1996, the respondents only entered into an agreement

regarding the suit property. However, now the sale deed has been finalized, interest of Smt. Kukreja created in the property by registered sale deed. The plaintiff however not changing her claim. The plaintiff is author of his own case. She came up with the appeal against the judgment and order of learned trial Court, but the property is same for which the original plaintiff is asking some relief from the Court. So, according to this Court, Smt. Kukreja now become proper party, though she may not be necessary party. She is having vested interest in the property, so now become a proper party in the suit, in absence of whom the litigation cannot be conducted on merit and so, in my respectful opinion, the prayers made by the present appellant i.e. original plaintiff are just and proper and needs to be allowed for proper adjudication of the matter and for ends of justice.

Hence, in the circumstances and for the reasons mentioned above, the Court proceed to pass the following order.

### ORDER

- [i] The application (Exh.35) is allowed.
- [ii] The appellant is directed to carry out necessary amendment and filed amended appeal memo within stipulated period as provided in the law.

Nagpur.  
Dated : 03.05.2025

( Smt. H.C. Shende )  
District Judge-6, Nagpur.

### C E R T I F I C A T E

I affirm that the contents of this PDF file Order are same word to word, as per the original Order.

Name of Stenographer : P.K. Tambe,  
Stenographer, G-I.