

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11011 OF 2026

Kalidas Yashwant Lonkar And Ors ...Petitioners

Versus

Nitin Shivram Londhe And Ors ...Respondents

Mr. Sudhir Sadavarte, for the Petitioners.

Mr. Aseem Naphade, a/w Sandeep Phatak and Adhik Kadam,
for the Respondents.

**CORAM: N. J. JAMADAR, J.
DATED: 29th AUGUST, 2026**

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JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India assails the legality, propriety, and correctness of an order passed by the learned District Judge, Pune, in Miscellaneous Civil Appeal No. 130 of 2026, whereby an application preferred by the Petitioners – Plaintiffs under the provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908 ('the Code'), for production of the purported Agreement for Sale executed by the Respondent/Defendant Nos. 1 to 4 in favour of Mrs. Nandini and Mr. Santosh Bahirat on 13th March, 2026, came to be

rejected.

3. The Petitioners-Plaintiffs claim to be the owners of land admeasuring 55 Are alongwith the structures, well, and a borewell therein situated at CTS No.1840, Old Survey No. 55A/2A, Village Mundhwa, within the limits of Pune Municipal Corporation. The Defendant Nos. 1 to 4 have purchased 15 Are land out of the adjacent land bearing Survey No. 55A/2C from the erstwhile co-owners of Survey No. 55A under a registered Sale Deed dated 8th February, 2013. The Defendant Nos. 1 to 4, by misusing their proximity with the Government Officials and Police Officers, attempted to encroach upon the suit land. The Plaintiffs were thus constrained to institute a suit seeking a declaration that the Defendants have no right to encroach upon the suit land or establish possession over any part thereof, erect a compound wall in the suit land, and for the consequential relief of injunction.

4. In the said suit, the Plaintiffs filed an application for temporary injunction on 5th January, 2026. By an order dated 9th January, 2026, the learned Civil Judge was persuaded to initially grant an ad-interim injunction and thereby restrain the Defendants from erecting a compound wall over the suit property till the appearance of the Defendants and, eventually,

by an order dated 4th May, 2026, the learned Civil Judge was persuaded to allow the application for temporary injunction and make the ad-interim injunction order passed on 9th January 2026 absolute.

5. Being aggrieved, the Defendants - Respondent Nos. 1 to 4 have preferred an appeal against the said order before the District Court.

6. In the said appeal, the Plaintiffs filed an application seeking permission to produce the purported Agreement for Sale dated 13th March, 2026, executed by the Defendants-Appellants in favour of Mrs. Nandini and Mr. Santosh Bahirat, by way of additional evidence. It was, *inter alia*, asserted that the learned Civil Judge had passed the ad-interim order on 9th January, 2026. The Defendants had appeared before the Trial Court on 22nd January, 2026 and eventually filed their affidavit-in-reply on 7th April, 2026. In the intervening period, on 13th March, 2026, the Defendants have executed purported Agreement for Sale dated 13th March, 2026, in respect of the suit property. The said instrument was, in effect, an absolute sale, though it was styled as an Agreement for Sale. It was, therefore, necessary to place the said instrument on the record of the Appellate Court by way of additional evidence.

7. By the impugned order, the learned District Judge was persuaded to reject the application observing that the said instrument had no concern with the subject matter of the dispute as it pertained to another property. The said instrument was not necessary to decide the controversy between the parties.

8. Being aggrieved, the Plaintiffs have invoked the writ jurisdiction of this Court.

9. I have heard Mr. Sudhir Sadavarte, the learned Counsel for the Petitioners, and Mr. Aseem Naphade, the learned Counsel for the Respondents, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

10. Mr. Sadavarte, the learned Counsel for the Petitioners, would submit that the learned District Judge did not properly appreciate the nature of the instruments and its impact upon the claim of the parties to the appeal, which awaits adjudication. The learned District Judge rejected the application by mechanically observing that the said instrument had no concern with the matter in dispute. Inviting the attention of the Court to the description of the property in respect of which the purported Agreement for Sale came to be executed, Mr.

Sadavarte would urge that the Defendant Nos. 1 to 4 have purported to sell the property bearing Old Survey No. 55A/2K, which the Defendants never acquired. The learned District Judge, according to Mr. Sadavarte, lost sight of the fact that the claim of Defendant Nos. 1 to 4 had its genesis in the Sale Deed dated 8th February, 2013 executed by the erstwhile co-owners of the Plaintiffs.

11. Mr. Naphade, the learned Counsel for the Respondents, attempted to support the impugned order. It was submitted that there was no injunction against the transfer or alienation of the property acquired by Defendant Nos. 1 to 4 under the Sale Deed dated 8th February, 2013. Therefore, the Plaintiffs cannot draw any mileage from the fact that Defendant Nos. 1 to 4 had entered into an Agreement for Sale in respect of the property which formed part of old Survey No. 55A/2C. Secondly, Mr. Naphade would urge, the learned District Judge was fully justified in rejecting the application for adduction of additional evidence, as the said instrument had no bearing upon the determination of the appeal preferred against the order granting temporary injunction.

12. It appears, the learned District Judge took a very hyper-technical view of the matter. The observations of the learned

District Judge that the purported instrument had no concern with the subject matter of the suit appeared to be clearly incorrect.

13. The chronology of the proceedings before the Trial Court assumes significance. The suit was instituted on 5th January, 2026. On 9th January, 2026, the Trial Court granted an ad-interim temporary injunction. The Defendants appeared before the Trial Court on 22nd January, 2026. An affidavit-in-reply was filed on 7th April, 2026. Eventually, the application for temporary injunction was allowed by the Trial Court on 4th May, 2026. In the intervening period, on 13th March, 2026, during the pendency of the suit and the application for temporary injunction, Defendant Nos. 1 to 4 executed the purported Agreement for Sale in favour of Mrs. Nandini and Mr. Santosh Bahirat.

14. It is imperative to note, in the affidavit-in-reply filed on behalf of Defendant Nos. 1 to 4 on 7th April, 2026; after three weeks of the execution of the said registered instrument, there was no reference to the instrument executed by Defendant Nos. 1 to 4 in favour of the third parties. Evidently, unbeknownst to the Plaintiffs, the Defendant Nos. 1 to 4 had executed the registered Agreement for Sale in favour of the third parties, and

there was also non-disclosure of the said fact in the affidavit-in-reply filed to the application for temporary injunction.

15. In a situation of this nature, the provisions contained in Order XLI Rule 27(1)(aa) of the Code were clearly attracted, as the instrument which was sought to be tendered by way of additional evidence was executed unbeknownst to the Plaintiffs and there was suppression of the said instrument. The observations of the learned District Judge that the application seeking permission to produce additional evidence did not fall within any of the clauses of Sub-Rule (1) of Rule 27 of Order XLI of the Code thus appeared to be unsustainable.

16. Ordinarily, the Appellate Court is not expected to travel beyond the record of the Court of first Instance and cannot take any additional evidence in appeal. The Appellate Court is, however, empowered to permit the parties to adduce additional evidence if the case is covered by any of the clauses of Order XLI Rule 27(1). If the conditions laid down in the said clauses are satisfied, the Appellate Court may, in its discretion, allow the parties to produce additional evidence. However, the discretion is required to be exercised in a judicious manner.

17. From a bare perusal of the instrument in question, it becomes abundantly clear that the title of Defendant Nos. 1 to 4

to the 15 Are land out of Survey No. 55A/2K is traced to the registered Sale Deed in favour of defendant Nos.1 to 4 dated 8th February, 2013. In the affidavit-in-reply filed to the temporary injunction application, the Defendant Nos. 1 to 4 categorically asserted that they had acquired 15 Are land out of Survey No. 55A/2C from the legal heirs of Jagannath Lonkar, the erstwhile co-owner of Survey No.55A, under the registered Sale Deed dated 8th February, 2013. It was this very land which under the instrument in question the Defendant Nos. 1 to 4 agreed to transfer in favour of Mrs. Nandini and Mr. Santosh Bahirat.

18. What is of critical salience is the fact that the recital 6 of the said registered instrument, *inter alia*, records that the Defendants had delivered the vacant, peaceful, and unobstructed possession of the said property to the purchasers. The implications of the delivery of possession of the 15 Are land out of Survey No. 55A/2C upon the justifiability of the order of injunction granted by the Trial Court appeared to be a relevant consideration. If the Defendant Nos. 1 to 4 have inducted transferees into the said property, the aspect of appropriately modulating the final relief that may be granted in the pending appeal was required to be examined. Therefore, the learned District Judge was not at all justified in rejecting the application

on the premise that the instrument in question did not pertain to the subject matter of the suit.

19. The upshot of aforesaid consideration is that, the impugned order suffers from legal infirmity. Resultantly, the impugned order deserves to be quashed and set aside and the application for producing the purported Agreement for Sale dated 13th March, 2026 before the Appellate Court in the pending Miscellaneous Civil Appeal deserves to be allowed.

20. Hence, the following order:

: O R D E R :

- (i) The Petition stands allowed.
- (ii) The impugned order is quashed and set aside.
- (iii) The application seeking permission to produce the purported Agreement for Sale on the record of the Appellate Court stands allowed.
- (iv) The Petitioners-Plaintiffs shall produce the said purported Agreement for Sale dated 13th March, 2026 before the Appellate Court within a period of two weeks from the date of uploading of this order.
- (v) The learned District Judge is requested to decide the

appeal on its own merits and in accordance with law without being influenced by any of the observations made hereinabove, which were confined to test the legality and correctness of the impugned order.

- (vi) Rule made absolute in the aforesaid terms.
- (vii) No order as to costs.

[N. J. JAMADAR, J.]