

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 12330 OF 2025
(FOR LEAVE TO FILE APPEAL)

IN

SECOND APPEAL (ST.) NO. 30769 OF 2025

Shri. Uday Ghanshyam Naik
Proprietor of M/s. G.N. Construction
and anr.

*.....Applicants/
Appellants*

: Versus :

M/s. Chandan Shanti Group of Companies
and Ors.

...Respondents

Mr. Vineet B. Naik, Senior Advocate *a/w. Mr. R.D. Suryawanshi i/b. Mr. Suraj N. Naik, for the Applicants/Appellants.*

Mr. Ashutosh R. Gole *with Mr. Siddharth Wakankar, for Respondent No.1-Plaintiff.*

CORAM : SANDEEP V. MARNE, J.

DATED : 25 AUGUST 2026.

P.C. :

1) The Applicants have filed the present application seeking leave of the Court to file Second Appeal challenging the judgment and decree

dated 9 May 2025 passed by the Learned District Judge-7, Thane in Regular Civil Appeal No.41/2020.

2) Respondent No.1/Plaintiff instituted Suit No.123/2008 for specific performance of Agreement for Sale dated 5 April 1995. By that Agreement, Defendant Nos.1 to 4 had allegedly agreed to sell in favour of the Plaintiff 1/3 share in respect of larger property. On 14 March 2008, the Trial Court passed an ad-interim order of status-quo. The status-quo order was confirmed on 3 July 2009. It is the case of the Plaintiff/Respondent No.1 that in breach of the status-quo order, the Applicants have purchased the entire larger land vide Sale-Deed dated 21 December 2010 from various persons including Defendant Nos.1 to 4 and Defendant No5 (*confirming party*).

3) Applicants are seeking leave of this Court to file appeal against the decree of the Appellate Court since they are ultimately affected by the decree. The Defendant Nos. 1 to 4 have lost interest in the proceedings and the Plaintiff has succeeded in the Appeal before the District Court without any opposition. Since Applicants claim title and possession of the suit property, the decree would ultimately be executed *qua* them. With this plea, the Application for leave to appeal is filed.

4) I have heard Mr. Naik, the learned Senior Advocate appearing for the Applicants and Mr. Gole, the learned counsel appearing for Respondent No.1-Plaintiff.

5) The application for leave to appeal is opposed by Respondent No.1-Plaintiff essentially on the ground that a purchaser *pendente lite* who has purchased the suit property in breach of injunction cannot be permitted to file appeal. It is contended that the purchase transaction vide Sale Deed dated 21 December 2010 is in the teeth of provisions of Section 52 of the Transfer of Property Act. Mr. Gole has relied upon the judgment of the Apex Court in *H. Anjanappa & Ors. Versus. A. Prabhakar & Ors*¹. in which the Apex Court has examined the entire case law on the subject of grant of leave to appeal and has summarised the principles in para-43 of the judgment as under :

43. The principles governing the grant of leave to appeal may be summarised as under:

- i. Sections 96 and 100 of the CPC respectively provide for preferring an appeal from an original decree or decree in appeal respectively;
- ii. The said provisions do not enumerate the categories of persons who can file an appeal;
- iii. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the court that he falls within the category of an aggrieved person;
- iv. It is only where a judgment and decree prejudicially affects a person who is not a party to the proceedings, he can prefer an appeal with the leave of the court;
- v. A person aggrieved, to file an appeal, must be one whose right is affected by reason of the judgment and decree sought to be impugned;
- vi. The expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury;
- vii. It would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment; and

1 2025 SCC Online SC 183

viii. Ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings.

6) Considering the issue of permissibility to grant leave to appeal in favour of purchaser *pendente lite*, the Apex Court has considered the Four Bench judgment in **Smt. Saila Bala Dassi Versus. Smt. Nirmala Sundari Dassi²**, and held in para-52 of the judgment in *H. Anjanappa* (supra) as under:

52. The law laid down by a four-Judge Bench of this Court in *Smt. Saila Bala Dassi vs. Sm. Nirmala Sundari Dassi and Anr.*, [1958] SCR 1287, is apt for resolving the issue arising for decision herein. A transferee of property from defendant during the pendency of the suit sought himself to be brought on record at the stage of appeal. The High Court dismissed the application as it was pressed only by reference to Order XXII Rule 10 of the CPC and it was conceded by the applicant that, not being a person who had obtained a transfer pending appeal, he was not covered within the scope of Order 22 Rule 10. In an appeal preferred by such transferee, this Court upheld the view of the High Court that a transferee prior to the filing of the appeal could not be brought on record in appeal by reference to Order XXII Rule 10 of the CPC. However, the Court held that an appeal is a proceeding for the purpose of Section 146 and further the expression "claiming under" is wide enough to include cases of devolution and assignment mentioned in Order XXII Rule 10. Whoever is entitled to be but has not been brought on record under Order XXII Rule 10 in a pending suit or proceeding would be entitled to prefer an appeal against the decree or order passed therein if his assignor could have filed such an appeal, there being no prohibition against it in the CPC. **A person having acquired an interest in suit property during the pendency of the suit and seeking to be brought on record at the stage of the appeal can do so by reference to Section 146 of the CPC which provision being a beneficent provision should be construed liberally and so as to advance justice and not in a restricted or technical sense.** Their Lordships held that being a purchaser *pendente lite*, a person will be bound by the proceedings taken by the successful party in execution of decree and justice requires that such purchaser should be given an opportunity to protect his rights. [See : *Raj Kumar vs. Sardari Lal*, (2004) 2 SCC 601]

(emphasis supplied)

2 1958 SCR 1287

7) Referring to the judgment in *Dhurandhar Prasad Singh Versus. Jai Prakash University*³, the Apex Court further held in *H. Anjanappa* in para-53 as under :

53. In *Dhurandhar Prasad Singh vs. Jai Prakash University*, reported in (2001) 6 SCC 534, this Court held that the plain language of Order XXII Rule 10 CPC does not suggest that leave can be sought by that person alone upon whom the interest has devolved. It simply says that the suit may be continued by the person upon whom such an interest has devolved and this applies in a case where the interest of the plaintiff has devolved. Likewise, in a case where interest of the defendant has devolved, the suit may be continued against such a person upon whom interest has devolved, but in either eventuality, for continuance of the suit against the persons upon whom the interest has devolved during the pendency of the suit, leave of the court has to be obtained. If it is laid down that leave can be obtained by that person alone upon whom interest of a party to the suit has devolved during its pendency, then there may be preposterous results as such a party might not be knowing about the litigation and consequently not feasible for him to apply for leave and if a duty is cast upon him, then in such an eventuality he would be bound by the decree even in cases of failure to apply for leave. As a rule of prudence, initial duty lies upon the plaintiff to apply for leave in case the factum of devolution was within his knowledge or with due diligence could have been known by him. **The person upon whom the interest has devolved may also apply for such a leave so that his interest may be properly represented as the original party, if it ceased to have an interest in the subject-matter of dispute by virtue of devolution of interest upon another person, may not take interest therein, in ordinary course, which is but natural, or by colluding with the other side.** If the submission of Mr. Nuli is accepted, a party upon whom interest has devolved, upon his failure to apply for leave, would be deprived from challenging correctness of the decree by filing a properly constituted suit on the ground that the original party having lost interest in the subject of dispute, did not properly prosecute or defend the litigation or, in doing so, colluded with the adversary.

(emphasis supplied)

8) The Apex Court thereafter concluded in para-56 in *H. Anjanappa* that a *lis pendente lite* transferee, though not brought on record under Order 22 Rule 10 of the Code of Civil Procedure, 1908 (**the Code**), is entitled to

³ (2001) 6 SCC 534

seek leave to appeal against a final decree against a transferor-Defendant in the Suit. The Apex Court however has cautioned that whether to grant such leave or not would be within the discretion of the Court since discretion of the Court needs to be exercised judiciously and in the facts and circumstances of each case. The Apex Court further laid down broad principles relating to grant of leave to appeal in favour of a transferee *pendente lite* in para-58 of the judgment. It would be apt to reproduce paras-56 to 58 of the judgment as under :

56. Thus, a *lis pendens* transferee though not brought on record under Order XXII Rule 10 CPC, is entitled to seek leave to appeal against the final decree passed against this transferor, the defendant in the suit. However, whether to grant such leave or not is within the discretion of the court and such discretion should be exercised judiciously in the facts and circumstances of each case.

57. Having regard to the fact that the Respondent Nos. 1 and 2 respectively purchased the suit property during the pendency of the suit instituted for specific performance and that too, while the injunction against the original owner (transferor) was operating, the Respondent Nos. 1 and 2 respectively could not be said to have even made out any good case for grant of leave to appeal.

58. From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:

- i. First, for the purpose of impleading a transferee *pendente lite*, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;
- ii. Secondly, a transferee *pendente lite* is not entitled to come on record as a matter of right;
- iii. Thirdly, there is no absolute rule that such a transferee *pendente lite*, with the leave of the Court should, in all cases, be allowed to come on record as a party;

- iv. Fourthly, the impleadment of a transferee *pendente lite* would depend upon the nature of the suit and appreciation of the material available on record;
- v. Fifthly, where a transferee *pendente lite* does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;
- vi. Sixthly, merely because such transferee *pendente lite* does not come on record, the concept of him (transferee *pendente lite*) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;
- vii. Seventhly, the sale transaction *pendente lite* is hit by the provisions of Section 52 of the Transfer of Property Act; and, viii. Eighthly, a transferee *pendente lite*, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.

Thus, the normal rule is that a transferee *pendente lite* can be granted leave to file appeal. Since the original defendant loses interest in defending the suit/appeal, the transferee can be permitted to file an appeal.

9) In case before the Apex Court in ***H. Anjanappa***, the Applicant seeking leave to appeal, who was a transferee *pendente lite*, had apparently purchased the suit property in breach of injunction order granted by the Trial Court. After purchasing the suit property, the Applicants/purchasers made an application to the Trial Court seeking his impleadment in the suit. The application was rejected. After rejection of the application, he did not challenge such rejection and the same attained finality. It was only after the suit was decreed that the Applicant/Purchaser filed an application seeking leave to file Appeal. This is apparent from the narration of facts in para-4(VII) and (IX) of the judgment which reads thus :

(VII) At this stage, on 10.07.2007, the Respondent Nos. 1-2 respectively herein filed an Interlocutory Application - I.A. No.4 in O.S. No.458/2006 seeking to implead themselves as Defendants in the said suit. The said I.A. No.4 was however rejected by the Trial Court vide Order dated 06.08.2014 on the ground that the Respondent Nos. 1-2 herein had purchased the portion of Suit Schedule Property without the permission of the court, during the pendency of suit and in contravention of a Specific Order of Injunction against alienation and creation of third party rights. The same being contrary to Section 52 of the Transfer of Property Act, 1882 (for short, "Transfer of Property Act"). The said order of rejection of impleadment never came to be challenged in appeal and thereby, the said issue has attained finality.

(VIII) Thereafter, the Trial Court upon appreciation of evidence on record passed its final Judgment and Decree in O.S. No. 458/2006 decreeing the suit of the plaintiffs and granting relief of specific performance with a specific direction to execute a sale deed within a period of 2 months. Assailing the legality of the said Order, the Defendant No. 3 (who is the Vendor of Respondent Nos. 1 & 2 herein) filed R.F.A. No.396/2017 before the High Court which came to be dismissed on 04.07.2017.

(IX) It is in the aforesaid backdrop that the Respondent Nos.1 & 2 respectively, in spite of a Specific Order of Injunction against the Defendant No. 3 (Vendor of the Respondent Nos.1 & 2) of not creating third party rights, purchased the suit property in contravention of Section 52 of the Transfer of Property Act. More importantly the application for impleadment in the Suit also came to be rejected and having not been challenged by the contesting Respondent Nos. 1 & 2, the issue had attained finality. After dismissal of the appeal filed by their Vendor i.e., Defendant No. 3, Respondent Nos 1 & 2 proceeded to challenge the order of Trial Court decreeing the Suit of the plaintiffs. After almost 2 years of passing of the Judgment and Decree dated 16.09.2016 in O.S. No.458/2006 and 11 years from the filing of the Impleadment Application, the Respondent Nos. 1 & 2 herein preferred RFA No.1303/2018 before the High Court challenging the said Decree.

10) Thus, in *H. Anjanappa* (supra), the Apex Court refused to grant leave to file appeal considering the facts of that case where the Applicant/purchaser therein had filed an application for impleadment during pendency of the suit and rejection of that application had attained finality. Another reason considered by the Hon'ble Apex Court for refusal to grant

leave to Appeal was knowledge on the part of the Applicant/purchaser about pendency of the suit.

11) In the present case however, there is nothing concrete on record for holding conclusively that the Applicants had knowledge about pendency of the suit before they entered into transaction dated 21 December 2010. Mr. Gole has invited attention of this Court to the Agreement executed between Defendant Nos.1 to 4 and Defendant No.5 in which there is a reference to the Agreement executed between the Plaintiff and Defendant Nos.1 to 4. The relevant covenant in the said Agreement reads thus :

2. The Agreement with Naresh Shah for M/s. ____ dated _____. He had paid earnest amount and give post dated cheques. However he has stopped the payment. Hence his said agreement stands cancelled and revoked automatically. The Vendors have agreed to refund the said amount by taking it from the purchaser. The said Agreement and all the documents given in pursuance of it are terminated and not binding on the vendors.

12) In my view however, the above covenant in fact creates an assurance in favour of the Applicants/purchasers that the transaction executed between the Plaintiff and Defendant Nos.1 to 4 was cancelled on account of dishonour of cheques. In any case, the above covenant does not refer to filing of the suit by the Plaintiff. As observed above, there is nothing concrete on record for presuming that Applicants had knowledge about pendency of the suit. Thus, though the purchase transaction is made on 21 December 2010, and the suit was dismissed on 18 January 2020, Plaintiff never gave any notice to the Applicant with regard to pendency of the suit. This is not to criticise the Plaintiff as he was not under duty to inform the purchaser about pendency of the Suit. At the same time, it must be

observed that there was reason for the Applicants to make any attempt to seek an entry in the pending suit.

13) It is well settled principle that an appeal is continuation of suit. Therefore, if a transferee *pendente lite* can be impleaded as party defendant in the suit, I see no reason why he cannot be permitted to file Appeal.

14) Faced with the situation that the Applicants did not have any notice about pendency of the suit, Mr. Gole has sought to highlight the fact that Applicants had acquired the knowledge about pendency of the Appeal. He submits that when the name of the Applicants were entered into the revenue records vide Mutation Entry No. 2979 certified on 6 April 2022/17 October 2022, such certification was subject to the condition of outcome of the present Appeal. However, it must be observed here that even though Applicants may have acquired knowledge about pendency of the Appeal, the suit of the plaintiff was dismissed on 18 January 2020. Dismissal of the suit may have created impression of perfection of title in the minds of the Applicants.

15) It must also be borne in mind that Defendant Nos.1 to 4, who were the main contesting Defendants in the Suit, have no interest left in challenging the decree of the Appellate Court. It appears that the suit was decided without any contest by Defendant Nos.1 to 4 though its outcome went against the plaintiff. Even before the Appellate Court, it appears that Defendant Nos.1 to 4 made no attempt to defend the Appeal. This is because Defendant Nos.1 to 4 have already transferred their $\frac{1}{3}$ share in favour of the

Applicants on 21 December 2010. Thus, the real person who would ultimately get affected by the outcome of the decree of the Appellate Court is now the Applicants. Applicants may have two courses of action in such a case when a decree is passed without their impleadment. They may either seek leave to appeal or they may wait for execution of the decree and then raise an objection to the execution of the decree under Order 21 Rule 97 of the Code. However, in the event of raising of such objection, the Plaintiff/decreeholder would contend that the Applicants ultimately claim through Defendant Nos.1 to 4 and that they do not have any independent right to occupy the land. In such scenario, the Applicants would be rendered remediless. Therefore, the correct remedy for the Applicants is to seek leave to file appeal against the decree passed by the Appellate Court

16) Considering the above circumstances, in my view, the Applicants have made out a case for grant of leave to file Appeal against the decree of the Appellate Court.

17) Consequently, the Interim Application is allowed by granting leave to the Applicants to file Appeal against the decree of the Appellate Court dated 9 May 2025 passed in Regular Civil Appeal No. 41/2020. The Interim Application is accordingly **allowed and disposed of**.

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SANDEEP V. MARNE, J.