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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.494 OF 1990

Bajirao Ramchandra Shelar,	)	
Aged 26 years, Occupation Driver &	)	
Trader, Resident of Karanje Peth,	)	
Satara, District Satara	)	...Appellant Ori.Plaintiff

....Versus....

1. Vishnu Rustum Shinde,	)
since deceased by Heirs :-	)
	)
1A. Laxmibai Vishnu Shinde,	)
since deceased by her Legal Heirs	)
& Legal Representatives -	)
	)
1A-1. Savitribai @ Sarubai Dattu	)
Dhanawade, Aged 40 Years	)
	)
1A-2. Sou.Indubai Bapu Chavan	)
Aged 35 Years	)
	)
	)
1A-3. Sou.Parvati Damodar Devrukhe)	)
Aged 35 Years	)
	)
All residing at Karanje Peth,	)
Tal. Satara, District Satara.	)
	)
2. Shri Jaysing Garu Nalawade,	)
(Since deceased through Legal Heirs)	)
	)
2-A Shri Ranaram Jaysing Nalawade,	)
Age 33 Years	)
	)
2-B Smt.Indubai Jaysing Nalawade,	)

	Age 55 Years	)	
		)	
2-C	Smt.Shalan Jaysing Nalawade	)	
	Age 53 Years	)	
		)	
	All Residing at 337, Karanje Peth,	)	
	Satara, District Satara.	)	...Respondents Ori.Defendants

WITH
SECOND APPEAL NO.495 OF 1990

Bajirao Ramchandra Shelar,	)	
Aged 26 years, Occupation Driver &	)	
Trader, Resident of Karanje Peth,	)	
Satara, District Satara	)	...Appellant Ori.Deft.No.2

....Versus....

- | | | |
|-------|---------------------------------------|---|
| 1. | Suvarna Natya Mandal, Karanje |) |
| | Chairman Shripati Narayan Kumbhar |) |
| | Since deceased through its member - |) |
| | |) |
| 1A. | Sadashiv Jotiba Kumbhar, |) |
| | (R.I.A. As member of Respondent No.1) |) |
| | Age : Major, residing at 322, |) |
| | Karanje Peth, Satara |) |
| | |) |
| 2. | Vishnu Rustum Shinde, |) |
| | since deceased by Heirs :- |) |
| | |) |
| 2A. | Laxmibai Vishnu Shinde, |) |
| | since deceased by her Legal Heirs |) |
| | & Legal Representatives - |) |
| | |) |
| 2A-1. | Parvati Damodar Devrukhe |) |
| | Age 35 Years, Occupation |) |
| | Household, R/O Sambarwadi |) |
| | Tal. & District Satara. |) |
| | |) |
| 2A-2. | Sarubai Dattu Dhanawade |) |
| | Age 31 Years, Occupation |) |

Household, R/o Mohot, Post :)
Medha, Taluka Jawali,)
District Satara.)
)
2A-3. Indubai Bapu Chavan)
Age 26 Years, Occupation)
Agriculturist, R/O Combawadi)
Post : Arvi, Tal. Koregaon,)
District Satara.)
)

...Respondents
No.1 Ori.Plff.
No.2 Ori.Deft 1

WITH
SECOND APPEAL NO.350 OF 1991

1. Vishnu Rustum Shinde,)
since deceased by Heirs :-)
)
1A. Laxmibai Vishnu Shinde,)
since deceased by her Legal Heirs)
& Legal Representatives -)
)
1A-1. Parvati Damodar Devrukhe)
Age 58 Years, Occupation)
Agriculture, R/O Sambarwadi)
Tal. & District Satara.)
)
1A-2. Sarubai Dattu Dhanawade)
Age 65 Years, Occupation)
Agriculture, R/o Mohol, Post :)
Medha, Taluka Jawali,)
District Satara.)
)
1A-3. Indubai Bapu Chavan)
Age 60 Years, Occupation)
Agriculturist, R/O Kombawadi)
Post : Arvi, Tal. Koregaon,)
District Satara)
)

....Versus....

1. Suvarna Natya Mandal, Karanje)

- Chairman Shripati Narayan Kumbhar)
Since deceased through its member -)
)
1A. Sadashiv Jotiba Kumbhar,)
(R.I.A. As member of Respondent No.1)
Age : Major, residing at 322,)
Karanje Peth, Satara)
)
2. Bajirao Ramchandra Shelar,)
Aged 26 years, Occupation Driver &)
Trader, Resident of Karanje Peth,)
Satara, District Satara)

...Respondents
No.1 Ori. Plff.
No.2 Ori.Deft.2

WITH
SECOND APPEAL NO.359 OF 1991

1. Vishnu Rustum Shinde,)
since deceased by Heirs :-)
)
1A. Laxmibai Vishnu Shinde,)
since deceased by her Legal Heirs)
& Legal Representatives -)
)
1A-1. Parvati Damu Devrukhe)
Age 58 Years, Occupation)
Agriculture, R/O Sambarwadi)
Tal. & District Satara.)
)
1A-2. Sarubai Dattu Dhanawade)
Age 65 Years, Occupation)
Agriculture, R/o Mohol, Post :)
Medha, Taluka Jawali,)
District Satara.)
)
1A-3. Indubai Bapu Chavan)
Age 60 Years, Occupation)
Agriculturist, R/O Kombawadi)
Post : Arvi, Tal. Koregaon,)
District Satara.)

...Appellants

....Versus....

Bajirao Ramchandra Shelar,)
Aged 26 years, Occupation Driver &)
Trader, Resident of Karanje Peth,)
Satara, District Satara.) ...Respondent

Mr.P.J. Thorat for the Appellant in S.A. No.494 of 1990 and S.A. No.495 of 1990 and for the Respondents in S.A. No.350 of 1991 and S.A. No.359 of 1991.

Mr.Victor K. Fernandes for the Appellant in S.A. No.350 of 1991 and S.A. No.359 of 1991 and for the Respondent in S.A. No.494 of 1990 and S.A. 495 of 1990.

Mr.Vilas A. Jadhav for the Respondent No.2-A in S.A. No.494 of 1990.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 29TH SEPTEMBER, 2016
PRONOUNCED ON : 26TH OCTOBER, 2016

JUDGMENT :-

1. By these four appeals filed under section 100 of the Code of Civil Procedure, 1908, the appellants have impugned the common judgment and decree dated 23rd April, 1990 passed by the learned District Judge, Satara in Regular Civil Appeal Nos.348 of 1985, 416 of 1987, 349 of 1985 and 416 of 1987. The aforesaid four appeals were heard together and are being disposed of by a common judgment. Some of the relevant facts for the purpose of deciding these appeals are as under :

2. Suit bearing Regular Civil Suit No.92 of 1971 is filed by Suvarna Natya Mandal (hereinafter referred to as the "said Mandal") against Vishnu R. Shinde and the said Bajirao R. Shelar. Vishnu R.

Shinde is referred as the "said Shinde" and Bajirao R. Shelar is referred as the "said Shelar". Suit No.320 of 1976 is filed by the said Shinde against said Shelar. Suit No.192 of 1979 is filed by said Shelar against said Shinde and Jaysing Ganu Nalawade. The said Jaysing Ganu Nalawade is hereinafter referred to as the "said Jaysing". It was the case of the said Mandal that the said Shinde was the owner of the suit property viz. CTS No.339, ademasuring 286 sq. mtrs. bounded by National Highway No.4 to North by Municipal Road to East and third person's properties to the West and South. The said Mandal is an unregistered association. It was the case of the said Mandal that the said Shinde agreed to sell the suit property to the said Mandal and entered into an agreement to sell with the said Mandal for selling the suit property for Rs.4,000/-. The said Mandal paid an earnest money of Rs.2,000/- under the agreement to sell and agreed to pay the balance amount of Rs.2,000/- in three years from 25th March 1971 to the said Shinde and then said Shinde should execute the sale deed and deliver possession to the said Mandal.

3. It was the case of the said Mandal that in September, 1973, the said Mandal contacted the said Shinde for executing the sale deed on receiving the balance amount, but the said Shinde avoided to perform his part of contract. It was the case of the said Mandal that when the Chairman of the said Mandal verified City Survey Record on 19th September, 1973, he came to know that the said Shelar had purchased the suit property from the said Shinde on 6th September, 1973 for Rs.5,250/-. The said Mandal thereafter issued a legal notice on 30th October, 1973 to the said Shinde and the said Shelar for executing the sale deed and for delivering possession of the suit property. Neither the said Shinde nor the said Shelar

replied to the said notice. It was the case of the said Mandal that the said Shinde informed the said Mandal that he was cheated by the said Shelar. The said Shelar refused to hand over possession of the suit property to the said Mandal.

4. Some time in the year 1974, the said Mandal therefore filed a suit for specific performance of the agreement dated 25th March, 1971 against the said Shinde and the said Shelar and also prayed for a declaration that the sale deed dated 6th September, 1973 executed by the said Shinde in favour of the said Shelar was illegal and void and also prayed for possession of the suit property.

5. The said Shinde filed a written statement in the said suit (Regular Civil Suit No.92 of 1974) filed the said Mandal and admitted that he had entered into an agreement dated 25th March, 1971 with the said Mandal in respect of the suit property and had also received earnest amount of Rs.2,000/- and had agreed to execute the sale deed within three years from the date of the said agreement with the said Mandal. It was the case of the said Shinde that the said Shelar had contacted him in the month of August, 1973 and had requested for letting out a portion of the suit property for running Cycle Shop. The said Shinde informed the said Shelar about the agreement dated 25th March, 1971 entered into between the said Shinde and said Mandal, however, the said Shelar insisted for possession of the portion of the suit property and promised to vacate the said portion when the sale deed would be executed by the said Shinde in favour of said Mandal.

6. It was the case of said Shinde in the written statement that

the said Shelar took him to the office of the Sub-Registrar and obtained his thumb impression on certain documents on 6th September, 1973 when the said Shinde was old age and was mentally disturbed.

7. The said Shelar filed a written statement in the said suit (Regular Civil Suit No.92 of 1974) filed by the said Mandal and raised various issues, including the issue of locus of the Chairman of the said Mandal for filing the said suit. It was averred that the said Shelar had purchased the suit property from the said Shinde under the registered sale deed dated 6th September, 1973. He also alleged the collusion between the said Mandal and said Shinde in filing Regular Civil Suit No.92 of 1974. It was averred that initially the suit property belonged to one Ganu Nalawade, who was the maternal uncle of the said Shinde, who gifted the suit property to the said Shinde under the registered Gift Deed dated 28th January, 1982. The said Shinde had given his genetic son Jaysing in adoption on 31st December, 1956 to said Ganu Hari Nalawade. It was averred that out of the suit property, a room in South-East corner was used by the said Jaysing for residential purpose and another room to the West side was in possession of the said Shinde.

8. It was the case of the said Shelar that at the time of execution of the sale deed in favour of the said Shelar by the said Shinde, the said Shinde had given an undertaking to get the room from his genetic son i.e. Jaysing vacated and also offered an undertaking from the said Shelar to allow said Shinde to reside in Western side room till his life time. The said Shelar accepted both these conditions and had thereafter entered into the registered sale

deed with the said Shinde. The said Shelar contended that he was a *bonafide* purchaser for value without notice of the suit agreement between the said Mandal and said Shinde.

9. The said Shinde thereafter converted his written statement in Regular Civil Suit No.92 of 1974 as his plaint (Regular Civil Suit No.320 of 1976) and prayed for a declaration that the sale deed dated 6th September, 1973 executed in favour of the said Shelar was illegal, void and not binding on him and also prayed for possession and *mesne-profits*. It was also contended by the said Shinde that from the notice dated 30th October, 1973 issued by the said Mandal, he came to know about the fraud alleged to have been exercised by the said Shelar upon him. In his written statement, the said Shelar had also raised the plea of limitation in Civil Suit No.92 of 1974 by placing reliance on Article 58 of the Limitation Act, 1963. He also raised a plea that Regular Civil Suit No.92 of 1974 was barred by acquiescence, waiver and estoppel.

10. Some time in the year 1979, the said Shelar filed a suit (Regular Civil Suit No.192 of 1979) against the said Shinde and his genetic son Jaysing *inter-alia* praying for possession of the portion of the suit property described in the plaint and for *mesne-profits*. In the said suit, the said Shinde and said Jaysing were impleaded as the defendants. In the suit Regular Civil Suit No.192 of 1979, the said Shinde adopted the issues raised by him in his written statement filed in the said Regular Civil Suit No.92 of 1974 and contended that he was in possession of the Eastern half and his erstwhile genetic son Jaysing was in possession of the Western side of the suit property and further contended that the sale deed was not binding on him. He

had already challenged the said sale deed by filing a separate suit (Regular Civil Suit No.320 of 1976). The said Jaysing, who was defendant no.2 in the said suit also filed a written statement and took the plea of adverse possession in respect of the Western half portion of the suit property.

11. Learned Second Joint Civil Judge, Junior Division, Satara, heard all the three suits i.e. Regular Civil Suit Nos.92 of 1974, 320 of 1976 and 192 of 1979 filed by the said Mandal, the said Shinde and the said Shelar together. Learned trial Judge framed separate issues in all the three suits and allowed parties to lead evidence in Regular Civil Suit No.92 of 1974. The learned trial Judge held that there was no dispute that the suit property initially belonged to Ganu Hari Nalawade, who was admittedly the maternal uncle of the said Shinde. The said Ganu Hari Nalawade had by his registered Gift Deed gifted the said property to the said Shinde, who in turn on 31st December, 1956 gave his first genetic son Jaysing in adoption to his maternal uncle. It is held that there was no dispute that the said deceased Shinde resided in the Eastern half portion of the suit property till his death in the year 1965 along with his adopted son Jaysing. It is held that there was no controversy with the said Shelar of purchasing the suit property under the sale deed for a consideration of Rs.5250/- from the said Shinde and had paid a sum of Rs.2,000/- out of the said consideration and had promised to pay the balance amount after receiving certain portion out of the suit properties from the possession of the said Shinde and his genetic son Jaysing within seven month from 6th September, 1973.

12. Learned trial Judge held that the said Shelar could not

claim himself to be the *bonafide* purchaser for value, paid in full and without notice of the said agreement. It is held that the said Mandal, who was the plaintiff in Regular Civil Suit No.92 of 1974 was entitled to specific performance of the agreement from the subsequent purchaser i.e. the said Shelar besides legal heirs of the said Shinde in respect of the suit property.

13. Insofar as Regular Civil Suit No.192 of 1979 filed by the said Shelar is concerned, the learned trial Judge held that the said Shelar had proved his title to the suit property. The said Shinde had failed to prove that the Sale Deed dated 6th September, 1973 was obtained by fraud. The said Shelar proved that he had agreed to accommodate the said Jaysing for seven months in the suit property and was to pay Rs.3,250/- to the said Shinde towards the balance consideration only after the said Jaysing would have vacated the suit property. Insofar as the claim of adverse possession made by Jaysing is concerned, the learned trial Judge held that the said Jaysing had failed to prove that he had become the owner of the suit property by adverse possession. The learned trial Judge also rejected the claim of the said Shelar for payment of compensation. The learned trial Judge however, passed a decree of possession in favour of the said Shelar in the said suit against the said Shinde and said Jaysing.

14. Insofar as Regular Civil Suit No.329 of 1976 filed by the said Shinde is concerned, it is held by the learned trial Judge that the said Shinde had failed to prove that the Sale Deed dated 6th September, 1973 was executed in favour of the said Shelar without consideration and practicing fraud upon them. The learned trial Judge

rendered a finding in the said suit that the said suit was barred by law of limitation as contemplated under Article 58 of the Limitation Act. The learned trial Judge held that the said Shinde was not entitled to any relief as prayed or otherwise.

15. The learned trial Judge accordingly dismissed the suit bearing Regular Civil Suit No.92 of 1974 filed by the said Mandal and the suit bearing Regular Civil Suit No.320 of 1976 filed by the said Shinde. The learned trial Judge however, decreed the suit bearing Regular Civil Suit No.192 of 1979 filed by the said Shelar against the said Shinde and the said Jaysing. The learned trial Judge directed the said Shinde and the said Jaysing to hand over possession of the portion which was in their possession on receipt of Rs.3,250/- from the said Shelar within three months from the date of the said decree.

16. Being aggrieved by the said common judgment and decree dated 10th December, 1984 passed by the learned Second Joint Civil Judge, Junior Division, Satara, the said Mandal filed an appeal (Regular Civil Appeal No.416 of 1987) before the learned District Court. The said Shinde filed an appeal (Regular Civil Appeal No.349 of 1985) before the learned District Court. The said Jaysing filed an appeal (Regular Civil Appeal No.348 of 1985) before the learned District Court. By a common judgment and decree dated 23rd April, 1990, the learned Third Additional District Judge, Satara, dismissed Regular Civil Appeal No.349 of 1985 filed by the said Shinde. Regular Civil Appeal No.348 of 1985 filed by the said Jaysing came to be allowed. The said Regular Civil Suit No.192 of 1979 filed by the said Shelar came to be dismissed. Insofar as Regular Civil Appeal No.416 of 1987, filed by the said Mandal is concerned, the

same came to be allowed.

17. The first appellate Court decreed the said suit (Regular Civil Suit No.92 of 1974) and directed the said Shinde and said Shelar to execute the sale deed in favour of the said Mandal in respect of the suit property upon receipt of Rs.2,000/- by the defendants to the said suit from the said Mandal and directed to deliver possession of the suit property to the said Mandal. It was further provided that on failure of the said Shinde and the said Shelar to execute the sale deed, the said Mandal do get the sale deed executed and obtain possession of the suit property from the defendants through the Court Commissioner.

18. Being aggrieved by the said common judgment and decree dated 23rd April, 1990 passed by the first appellate Court, the said Shelar filed second appeal (494 of 1990) in this Court. The said Shinde filed second appeal (359 of 1991) in this Court impugning the judgment and decree passed by the first appellate Court in Regular Civil Appeal No.349 of 1985, which was filed by the said Shinde. The said Shinde filed second appeal (350 of 1991) impugning the judgment and decree dated 23rd April, 1990 passed in Regular Civil Appeal No.416 of 1987, which was filed by the said Mandal. The said Shelar filed second appeal (495 of 1990) in this Court thereby impugning common judgment and decree dated 23rd April, 1990 passed by the first appellate Court in Regular Civil Appeal No.416 of 1987, which was filed by the said Mandal.

19. The aforesaid four appeals were admitted by this Court on different substantial questions of law formulated in the orders passed

by this Court. All four appeals were directed to be heard together.

20. Substantial questions of law formulated in Second Appeal Nos.494 of 1990 and 495 of 1990 are as under :-

- a). Whether the Lower Appellate Court after having found that the sale deed dated 6th September, 1973 by the deceased Vishnu Rustum Shinde in favour of the Appellant was not vitiated on any of the grounds as contended by Vishnu Rustum Shinde, his heirs and Suvarna Natya Mandal was correct in allowing the said appeal ?
- b). Whether the findings of the Lower Appellate Court that the Appellant is not a *bona-fide* purchaser for value without notice is based on no evidence at all and only on the basis of the surmise that the Appellant is a resident of Karanje. The Lower Appellate Court has not at all referred to the correct appreciation of evidence by the Trial Court on this issue ?
- c). Whether the Lower Appellate Court has correctly and properly exercised its Appellate Jurisdiction in appreciating the evidence on record and whether the Judgment suffers from non-application of mind, irrationality and perversity ?
- d). Whether the Lower Appellate Court has totally misinterpreted and misapplied the ratios of the cases reported in A.I.R. 1976 Orissa, 113, 1912 I.L.R. 36 Bombay, page 446 and A.I.R. 1968

Madras Page 383 to the facts of the present case to hold that the purchase by the Appellant does not entitle him to claim benefit of Section 19(b) of the Specific Relief Act ?

- e). Whether the Courts below were correct in holding that the Suvarna Natya Mandal (Plaintiff in Regular Civil Suit No.92 of 1974) was legal entity capable of entering into contract as well as to file suit for specific performance. The said body being unregistered association whether the exists as a legal person and is capable of entering into contract and to sue and be sued. Whether the suit filed by such body was maintainable in law ?

21. Substantial questions of law formulated in Second Appeal Nos.350 of 1991 are as under :-

- a). Whether the lower Appellate Court was correct in allowing the appeal filed by the Respondent No.1 after it came to the conclusion that the sale-deed dated 6th September, 1973 executed by the deceased Vishnu Rustom Shinde in favour of the Respondent No.2 was illegal and not binding ?
- b). Whether the lower Appellate Court was correct in decreeing the suit for specific performance filed by the Respondent no.1 when the document dated 25th March, 1971 is highly

suspicious as found by the trial Court ?

- c). In the peculiar circumstances of the present case, whether the claims of the Respondents ought to have been rejected and the suit filed by the Appellants being Regular Civil Suit No.320 of 1976 ought to have been decreed ?
- d). Whether the Respondent No.1 was ready and willing to perform his part of the contract under agreement, dated 25th March, 1971 and was, thus, disentitled to specific performance of the agreement of sale, dated 25th March, 1971 ?
- e). Whether the judgment of the lower Appellate Court is contrary to the established principles of law regarding specific performance of agreement of sale ?

22. Mr.Thorat, learned counsel appearing for the said Shelar, who is the appellant in Second Appeal Nos.494 of 1990 and 495 of 1990, invited my attention to various findings recorded by the two Courts below. It is submitted that the learned trial Judge had already considered the entire documentary and oral evidence led by the parties in the suit (Regular Civil Suit No.192 of 1997) and had rightly decreed the said suit and had directed the said Shinde and Jaysing to hand over possession of the portion which was in their possession on receipt of Rs.3,250/- from the said Shelar within three months of the date of decree.

23. Learned counsel invited my attention to the judgment and decree passed by the lower appellate Court in Regular Civil Appeal

No.348 of 1985 by which the judgment and decree passed by the learned trial Judge on 10th December, 1984 came to be reversed. He submits that the first appellate Court ought to have given adequate reasons under Order 41 Rule 32 of the Code of Civil Procedure for reversing the findings and reasons recorded by the learned trial Judge. He submits that the so called reasons recorded by the first appellate Court in the judgment and decree passed in Regular Civil Appeal No.348 of 1985 are very cryptic and are without any discussion about the evidence and the pleadings in the said judgment and decree. He submits that the findings of the learned trial Judge that the agreement dated 25th March, 1971 executed by the said Shinde in favour of said Mandal was a suspicious document though was not set aside by the first appellate Court, the first appellate Court erroneously granted a decree of specific performance in favour of the said Mandal.

24. It is submitted by the learned counsel that non-payment of consideration of Rs.3,250/- by his client i.e. said Shelar to the said Shinde would not have rendered the sale deed illegal or void. He submits that under section 54 of the Transfer of Property Act, the payment of balance consideration was permissible to be made in future.

25. It is submitted by the learned counsel for the said Shelar that insofar as the decree for payment of maintenance in favour of Laxmibai, widow of the said Shinde and the same shall be charged on the property is without any pleading or without prayer by the plaintiff in the said suit (Regular Civil Suit No.320 of 1976). He submits that the wife of the said Shinde was impleaded in view of his

demise and as a legal heir. She had adopted the written statement filed by the said Vishnu Shinde. He submits that the first appellate Court could not have passed a decree for maintenance or for creation of charge on the suit property for the first time.

26. It is submitted by the learned counsel for the said Shelar that his client was a *bonafide* purchaser for value and without notice. The sale deed executed in his favour was a registered document duly proved before the learned trial Judge as well as before the first appellate Court. He submits that under section 19(b) of the Specific Relief Act, 1963, no specific relief could be granted by the learned trial Judge in the suit (Regular Civil Suit No.92 of 1974) filed by the said Mandal against the said Shelar, who was *bonafide* purchaser for value without notice.

27. Mr.Thorat, learned counsel for the said Shelar placed reliance on the judgment of the Supreme Court in case of **Shasidhar & Ors. vs. Ashwini Uma Mathad & Anr., (2015) 11 SCC 269** and in particular paragraphs 11 to 17 in support of the submission that the first appellate Court ought to have dealt with all the issues and the evidence led by the parties before recording its findings. He also placed reliance on the judgment of the Supreme Court in case of **Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC 179** and in particular paragraph 15 in support of the said proposition.

28. Mr.Thorat, learned counsel for the said Shelar placed reliance on the judgment of this Court in case of **Joao Salvador Jesus & Anr. vs. Fatima Electra Jasmina D'Silva, 2005(1) Bom.C.R. 488** and in particular paragraph 20 and would submit that

though the appellate Court can mould the relief, it cannot grant any relief, which was not claimed by a party. It is submitted by the learned counsel for the said Shelar that the trial Court had rendered a finding that the said Mandal did not have funds when the agreement for sale was executed. The trial Court had perused the accounts produced by the witness examined by the said Mandal and had noticed the alleged donations from the office bearers for some time in the month of September, 1973, there were no funds available with the said Mandal for making payment under the agreement for sale to the vendor. Since the said Mandal did not have financial capacity to pay the consideration amount in terms of the said agreement for sale, the said Mandal was not ready and willing to comply with their part of obligations under the said agreement for sale.

29. It is submitted by the learned counsel for the said Shelar that the registered document executed by the said Shinde in favour of the said Shelar could not be up set by the first appellate Court. He submits that both the Courts below had rendered a finding that the document entered into with the said Shelar was not vitiated by fraud. He submits that the decree passed by the learned trial Judge in favour of the said Shelar for possession thus could not have been set aside by the first appellate Court. He submits that the user of the said Jaysing was permissive and he had not established any adverse possession in respect of the suit property. He submits that Second Appeal Nos.494 of 1990 and 495 of 1990 filed by the said Shelar thus shall be allowed. It is submitted that the second appeal filed by the said Shinde (359 of 1991) deserves to be dismissed.

30. Mr.Fernandes, learned counsel appearing for the said

Shinde (original plaintiff in Regular Civil Suit No.320 of 1976 and the appellant in Second Appeal Nos.350 of 1991 and 359 of 1991) invited my attention to the findings rendered by the learned trial Judge in Regular Civil Suit No.320 of 1976 and would submit that the findings rendered by the learned trial Judge and also the findings rendered by the first appellate Court in Regular Civil Appeal No.349 of 1985 are perverse. He invited my attention to the Sale Deed dated 6th September, 1973 executed in favour of the said Shelar and would submit that the sale deed was *ex-facie* illegal, void and was not binding upon his client. He submits that the sale deed was totally fraudulent. It is submit that the said Shelar had admittedly not paid a sum of Rs.3,250/- towards the balance consideration since they had no funds to pay the said amount.

31. It is submitted by the learned counsel that there was no purpose of preparing other two agreements on the same date when the said agreement dated 6th September, 1973 was executed in favour of the said Shelar by his client since the agreement for sale dated 6th September, 1973 was already executed. He submits that preparation of other two documents which were not in conformity with the first document were totally illegal along with the first agreement. He submits that the learned trial Judge had considered all three documents though the same were contradictory to each other. He submits that the impugned judgment and decree passed by the learned trial Judge as well as the first appellate Court in Regular Civil Suit No.320 of 1976 and in Regular Civil Appeal No.349 of 1985 against the said Shinde are totally perverse.

32. It is submitted by the learned counsel that the said Shelar

had not even produced the original of two other documents for perusal of the learned trial Judge but had only produced the agreement for sale dated 6th September, 1973. He submits that admittedly the other two agreements were not even registered.

33. Learned counsel for the said Shinde placed reliance on the judgment of the Supreme Court in case of **P. Chandrasekharan & Ors. vs. S. Kanakarajan & Ors., AIR 2007 SC 2306** and in particular paragraph 13 in support of his submission that interpretation of a document which goes to the root of the title of a party to the lis would indisputably give rise to a question of law and thus this Court shall interfere with the erroneous and perverse findings of the two Courts below on the interpretation of the agreement in these second appeals filed under section 100 of the Code of Civil Procedure, 1908.

34. None appeared for the said Mandal (original plaintiff in Regular Civil Suit No.92 of 1974 and the respondent no.1 in Second Appeal No.495 of 1990 and the respondent no.1 in Second Appeal No.350 of 1991). The said Jaysing, who was the defendant no.2, his legal heirs which were defendant nos.2-A to 2-C in Regular Civil Suit No.192 of 1979 and respondent no.2 in Second Appeal No.494 of 1990 also did not appear when the matter was heard finally, though were served.

REASONS AND CONCLUSIONS :

35. Insofar as Regular Civil Suit No.192 of 1979 filed by the said Shelar against the said Shinde and said Jaysing is concerned, the learned trial Judge has held that it was not disputed that the suit property was the gifted property of the said deceased Shinde. The

said Jaysing was the real son of the said deceased Shinde and had gone in adoption to Ganu Hari Nalawade, who was the original owner of the suit property. The said Jaysing was residing with the said Shinde and also in a portion of the suit property.

36. The learned trial Judge considered the oral evidence of the said Shelar, who proved that the said agreement dated 6th September, 1973 was scribed by one Chandoba Kadam and was dictated by the said Shinde and was read over and explained to the said Shinde. The said Shinde and the witness though had put their thumb impression upon the said document. The said document was duly registered before the Sub-Registrar. The said document recited that the price of the suit house was agreed to Rs.5,250/- out of which Rs.1,000/- was paid four days prior to the date of execution of the agreement and another Rs.1,000/- at the time of execution of the agreement. The said witness further proved that on the same day, the parties had executed two separate agreements in favour of each other in respect of the portion in possession of the said Shinde and his real son the said Jaysing out of the said property. It was agreed between the parties that the portion in possession of the said Jaysing was to be vacated within seven months and the said sum of Rs.3,250/- was to be paid to the said Shinde upon the said Jaysing vacating the portion of the suit property. The said Shinde was allowed to reside in the portion of 2 Khans out of the said house during his life time.

37. The learned trial Judge also considered the oral evidence of other witnesses and held that the said Laxmibai, the widow of the said Shinde had admitted in her cross-examination that she was not

knowing the transaction done by her husband i.e. the said Shinde. The learned trial Judge held that the evidence of the said Laxmibai was totally inconsistent. The learned trial Judge also rendered a finding that the other two documents, which were executed on the same day were proved.

38. In paragraph 24 of the impugned judgment and decree passed by the learned trial Judge, a finding is rendered that the said Laxmibai, the widow of the said Shinde had failed to establish that the Sale Deed dated 6th September, 1973 in favour of the said Shelar was executed by the deceased Shinde by practicing fraud upon him or that the same was without consideration.

39. Insofar as the possession of the said Jaysing is concerned, the learned trial Judge referred to the agreement for sale dated 6th September, 1973 and after considering the oral and documentary evidence, held that in view of the clear pleading of the said Shelar and in absence of rebuttal by the said Shinde and said Jaysing, the contentions raised by the said Shinde and said Shelar were not produced. The dispute had arisen between the said Shinde and said Jaysing subsequently over the title of the suit house. The learned trial Judge held that the agreement dated 6th September, 1973 was executed by the said Shinde in favour of the said Shelar, the said Shinde had title over the suit property and the said Jaysing was in possession of certain portion of the suit house i.e. adopted father i.e. Ganu Hari Nalawade. The learned trial Judge accordingly held that possession of the said Jaysing was a permissive possession and not not be turned into an adverse possession.

40. Insofar as the issue of limitation is concerned, the learned trial Judge after considering the oral and documentary evidence has held that the suit filed by the said Shinde against the said Shelar for a declaration was barred by law of limitation. There was a delay of 9 days in filing the suit.

41. Insofar as the suit filed by the said Mandal is concerned, it is held by the learned trial Judge that there were only 9 members in the said Mandal who had contributed their membership of Rs.11/- per head and thus only a sum of Rs.99/- were in the hands of the said Mandal on 9th June, 1968, whereas on the same day a sum of Rs.150/- was shown as expenditure by the said Mandal for performing a drama. It is held that the account books showed the receipt of donation from 13 members and as against that a sum of Rs.2,000/- was shown to have been paid as an earnest money under an agreement of sale dated 25th March, 1971 entered into in favour of the said Mandal by the said Shinde. The learned trial Judge held that the documents produced by the said Mandal were falsified and the said Mandal had no funds for paying the balance consideration as reflected from the account produced by the said Mandal.

42. Insofar as the judgment and decree passed by the first appellate Court is concerned, the first appellate Court independently considered the oral and document evidence led by the parties and had allowed Regular Civil Appeal filed by the said Mandal. A perusal of the judgment and decree passed by the first appellate Court indicates that the reasons and the findings recorded by the first appellate Court insofar as reversal of the findings rendered by the learned trial Judge in the said suit filed by the said Mandal are very

cryptic and without dealing with the oral and documentary evidence which was appreciated by the learned trial Judge in the said Regular Civil Suit No.92 of 1974.

43. A perusal of the judgment and decree passed by the first appellate Court in Regular Civil Appeal No.348 of 1985 filed by the said Jaysing indicates that the said judgment and decree also records no sufficient reasons and the first appellate Court has not considered the oral and documentary evidence in right perspective. The Supreme Court in case of **Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC 179** held that the first appeal is valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. It is also held that the appellate Court agreeing with the view of the learned trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court ; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice. In my view the principles of law laid down by the Supreme Court in case of **Santosh Hazari** (supra) squarely applies to the facts of this case.

44. The Supreme Court in case of **Shasidhar & Ors. vs. Ashwini Uma Mathad & Anr. (2015) 11 SCC 269** and in particular paragraphs 11 to 17 has dealt with the powers of the first appellate

Court under section 96 of the Code of Civil Procedure and after advertizing the judgment in case of **Santosh Hazari** (supra) and other judgments have laid down the criteria to be considered by the first appellate Court in view of Order 41 Rule 31 in the judgment and decree of the first appellate Court. Since the judgment and decree of the first appellate Court was a cryptic and none of the relevant aspects had been noticed in the impugned judgment and decree, the Supreme Court in the said judgment has set aside the judgment of the first appellate Court. The principles laid down by the Supreme Court in case of **Shasidhar & Ors.** (supra) squarely applies to the facts of this Court.

45. A perusal of the judgment and decree passed by the first appellate Court in Regular Civil Appeal No.348 of 1985 and in Regular Civil Appeal No.416 of 1987 clearly indicates that the first appellate Court has not considered the oral and documentary evidence which was dealt with extensively by the learned trial Judge in the judgment and decree dated 10th December, 1984 and is cryptic. In my view, the findings recorded by the learned trial Judge if has to be reversed by the first appellate Court, the reasons and the findings recorded by the first appellate Court cannot be cryptic and has to be in detail after considering the oral and documentary evidence led by both the parties. The judgment and decree of the first appellate Court should indicate as to why and for what reasons the judgment and decree of the learned trial Judge deserves interference and was required to be reversed. In my view, the judgment and decree rendered by the first appellate Court in Regular Civil Appeal No.416 of 1987 and in Regular Civil Appeal No.348 of 1985 are contrary to the principles laid down by the Supreme Court and is in

violation of section 96 of the Code of Civil Procedure, 1908.

46. A perusal of the judgment and decree dated 23rd April, 1990 in Regular Civil Appeal No.416 of 1987 clearly indicates that the findings of the learned trial Judge in Regular Civil Suit No.92 of 1974 that the agreement dated 25th March, 1971 executed by the said Shinde in favour of the said Mandal was a suspicious document was not reversed by the first appellate Court in Regular Civil Appeal No.416 of 1987. However, the first appellate Court still passed a decree for specific performance in favour of the said Mandal without any basis and contrary to the evidence on record.

47. In my view, the balance consideration payable by the said Shelar to the said Shinde under the said agreement dated 6th September, 1973 was payable upon the said Shinde handing over possession of the other portion of the suit property to the said Shelar which the said Shinde had failed to hand over. Be that as it may, the first appellate Court could not have reversed the decree for possession of the suit property in favour of the said Shelar on the ground that the balance payment was not paid by the said Shelar. In my view, non-payment of the balance consideration amount, cannot render the sale deed illegal under section 54 of the Transfer of Property Act. The learned trial Judge had rightly directed the said Shinde and the said Jaysing to hand over the portion of the property in their possession to the said Shelar on payment of balance consideration of Rs.3,250/-. The impugned judgment and decree passed by the first appellate Court on 23th April, 1990 reversing the judgment and decree passed by the learned trial Judge in Regular Civil Suit No.192 of 1979 in favour of the said Shelar is perverse and

deserves to be set aside.

48. A perusal of the judgment and decree passed by the learned trial Judge in Regular Civil Suit No.320 of 1976 indicates that the learned trial Judge had directed the payment of maintenance under section 39 of the Transfer of Property Act and had passed an order for creating a charge on the property, whereas the said Laxmibai was impleaded in place of the said Shinde upon his demise and she had adopted the written statement filed by the said Shinde. She had not filed any separate proceedings for recovery of maintenance or for creation of any charge on the suit property. The learned trial Judge however, has exceeded its jurisdiction by passing such an order creating a charge on the suit property though the same was neither the subject matter of the said suit, nor any prayer was made by the said Laxmibai.

49. Insofar as the submission of the learned counsel for the said Shinde that the Sale Deed dated 6th September, 1973 entered into between the said Shinde and said Shelar was fraudulent on the ground that the balance consideration was not paid or that the said Shelar did not have funds to pay the balance consideration is concerned, in my view, there is no substance in this submission made by the learned counsel. The said amount of Rs.3,250/- was payable by the said Shelar upon the said Shinde handing over possession of the portion of the suit property to the said Shelar, which admittedly the said Shinde had failed to hand over. In my view, in any event, the sale deed cannot be considered as fraudulent even if the balance consideration was not paid by the purchaser.

50. Insofar as the submission of the learned counsel for the said Shinde that other two documents which were executed on 6th September, 1973 were inconsistent with the Sale Deed dated 6th September, 1973 is concerned, the learned trial Judge has considered all three documents rightly and had rendered a finding of fact that the execution of all three documents was proved by the witness examined by the said Shelar and the same did not disclose any contradiction as contended by the learned counsel for the said Shinde.

51. Insofar as the submission of the learned counsel for the said Shinde that the said Shelar had not produced the original of the said two documents, and had only produced the photocopy is concerned, the said Shinde had examined the other witness to prove the execution and the contents of the said documents also. The said Shinde had not disputed the execution of the said document.

52. Insofar as the judgment of the Supreme Court in case of **P. Chandrasekharan & Ors.** (supra) relied upon by the learned counsel for the said Shinde is concerned, even in the said judgment, it is held by the Supreme Court that there cannot be any doubt whatsoever that substantial question of law is different from a question of law. It is held that the interpretation of a document which goes to the root of the title of a party to lis would un-disputably give rise to a question of law. In my view, this judgment does not assist the case of the said Shinde even remotely. The learned trial Judge had passed a decree in favour of the said Shelar in Regular Civil Suit No.192 of 1979 and had dismissed the suit of the said Shinde (Regular Civil Suit No.320 of 1976) after considering the oral and

documentary evidence and not on the interpretation of the agreements dated 6th September, 1973. The first appellate Court rightly dismissed the appeal (Regular Civil Appeal No.349 of 1985) filed by the said Shinde against the said Shelar. The findings rendered by the learned trial Judge in Regular Civil Suit No.320 of 1976 and by the first appellate Court in Regular Civil Appeal No.349 of 1985 being concurrent findings and not being perverse, cannot be interfered with by this Court under section 100 of the Code of Civil Procedure, 1908.

53. In my view, there is no merit in the Second Appeal No.359 of 1991 filed by the said Shinde. The judgment and decree however, passed by the lower appellate Court in Regular Civil Appeal No.416 of 1987 insofar as the judgment and decree passed in favour of the said Mandal is concerned, being perverse, deserves to be set aside.

54. For the reasons recorded aforesaid, substantial questions of law formulated in Second Appeal Nos.494 of 1990 and 495 of 1990 are answered as under :

Substantial question of law (a) is answered in negative. Substantial question of law (b) is answered in affirmative. Substantial question of law (c) is answered in negative. Substantial question of law (d) is answered in affirmative. Substantial question of law (e) is answered in affirmative.

55. Insofar as substantial questions of law formulated in Second Appeal No.350 of 1991 are concerned, the same are answered as under :-

Substantial question of law (a) is answered in affirmative. Substantial question of law (b) is answered in negative. Insofar as the question as to whether the claims of the respondents in the said appeal ought to have been rejected is concerned, the same is answered in affirmative. Insofar as the question as to whether the suit filed by the appellants in the said appeal arising out of Regular Civil Suit No.320 of 1976 ought to have been decreed is concerned, the same is answered in negative. Substantial question of law (d) is answered in negative. Substantial question of law (e) is answered in affirmative.

56. I therefore, pass the following order :-

a). Second Appeal No.494 of 1990 is allowed. The judgment and decree dated 23rd April, 1990 passed by the first appellate Court in Regular Civil Appeal No.348 of 1985 is set aside. Regular Civil Appeal No.348 of 1985 is dismissed.

b). Second Appeal No.495 of 1990 is allowed. The judgment and decree dated 23rd April, 1990 passed in Regular Civil Appeal No.416 of 1987 is set aside. Regular Civil Appeal No.416 of 1987 is dismissed.

c). Second Appeal No.359 of 1991 is dismissed.

d). Second Appeal No.350 of 1991 is allowed. The judgment and decree dated 23rd April, 1990 passed in Regular Civil Appeal No.416 of 1987 is set aside. Regular Civil Appeal No.416 of 1987 is

dismissed.

e). There shall be no order as to costs.

(R.D. DHANUKA, J.)