

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

**INTERIM APPLICATION NO.1886 OF 2022
IN
SECOND APPEAL NO. 645 OF 2006**

Dinesh Ramrao K. Saxena ...Petitioner

IN THE MATTER BETWEEN:

Ramniwas Chetram Agarwal (Bansal) ...Appellant

Versus

Dinesh Chandra K. Saxena & Ors. ...Respondents

Mr. Abhishek Jebaraj i/b Mr. Zaman Ali for the Petitioner in
IA/1886/2022.

Mr. Vilas B. Tapkir for Original Appellant in SA/645/2006.

CORAM : VINAY JOSHI, J.

DATED : 12 SEPTEMBER 2023

PC. :

1. Respondent no.1 (Original Plaintiff) took out this Interim Application in terms of Order 41 Rule 25 of CPC for framing additional issues which are as below;

- 1. Whether both sale deeds dated 13-3-1995 are forged and thus need to be cancelled as void ab initio?*
- 2. Whether both sale deeds dated 13-3-1995 are obtained by misrepresentation and thus need to be cancelled as void ab initio?*
- 3. Whether both sale deeds dated 13-3-1995 need to be cancelled as void ab initio for lack of valid consideration?*
- 4. Whether the original defendant No.4 can claim an interest as transferee pendente lite in view of valid sale conditions not being met?*

2. The other side resisted for framing additional issues by contending that substantive suit i.e. Special Civil Suit no. 2084/95 filed by Respondent no.1 is pending for adjudication wherein the same issues are already framed.

3. Initially Respondent no. 1 Lila Lall has filed Special Civil Suit No. 289/86 seeking declaration of ownership in respect of suit property. The said suit was dismissed by Trial Court on merits. Being aggrieved Lila Lall filed first appeal wherein he succeeded and dismissal was reversed. It was declared that Lila Lall was the real owner of the suit property as it was a benami transaction.

Consequentially, possession was handed over.

4. After dismissal of first suit of Lila Lall, the then Defendants have sold their 2/3 share in favour of Appellant in the year 1995. Noting said transaction Plaintiff Lila Lall has filed substantive suit bearing Special Civil Suit No. 2084 /1995 for setting aside the sale deed dated 13/03/1995 executed by Defendants of earlier suit in favour of present Appellant. The said suit was filed during pendency of first appeal filed by Lila Lall. Later on the first appeal was allowed declaring Lila Lall's exclusive ownership. The Appellant a stranger purchaser has filed this second appeal challenging the Judgment of first Appellate Court as it brought dent on his title.

5. In second appeal, the principal issue is, whether Lila Lall is exclusive/real owner of the subject property on the basis of sale deed of the year 1968. As a matter of fact, the tenability of subsequent alienation dated 13/03/1995 depends upon the rights which would be adjudicated in the second appeal.

6. By moving this Interim Application Lila Lall desires to add the same issues which were already pending for adjudication in his earlier suit of the year 1995. In fact there are no supporting pleadings in the

original suit out of which the second appeal arose. The powers under Order 41 Rule 25 can be resorted if the Trial Court has omitted to frame certain issues or it is in the opinion of Court that for determining the question before the Court, it is necessary to frame the issues. For deciding core question involved in second appeal, the proposed issues which are already framed in pending suit are not required to be decided.

7. In view of above, there is no propriety in framing additional issues on which already parties are litigating since 1995 in another suit. The issues involved and the proposed appeals are directly connected with the proposed issues. These can be adjudicated in pending suit.

8. Application stands rejected.

(VINAY JOSHI, J.)