

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 347 OF 2014
WITH
INTERIM APPLICATION NO. 10259 OF 2024
CIVIL APPLICATION NO. 1346 OF 2008
IN
SECOND APPEAL NO. 347 OF 2014
WITH
SECOND APPEAL NO. 736 OF 2015
WITH
INTERIM APPLICATION NO. 10261 OF 2024
CIVIL APPLICATION NO. 1344 OF 2008
IN
SECOND APPEAL NO. 736 OF 2015**

Shankar Karbhari Gaikwad
(Since Decd. Thr. LRs) and ors

.....Appellants

Vs.

Vishwanath Malhari Gaikwad
(Since Decd. Thr. LRs) and ors

.....Respondents

Mr. Hitesh Mutha for the appellants

Mr. Pratik Rahade i/b Mr. P. N. Joshi for respondent nos. 1A to 1E and
4

CORAM : GAURI GODSE, J.

DATE : 6th DECEMBER 2024.

ORDER:

1. Copies of Second Appeal No. 736 of 2015 and Interim

Application No. 10261 of 2024 are tendered by the learned advocate for the appellants and the same are taken on record.

2. Heard learned counsel for the parties. The second appeals are admitted on the following substantial questions of law:

I. In view of the relevant dates with regard to the transactions between the plaintiff's father and defendant no. 4 and the cause of action pleaded by the plaintiff, whether the suit could have been dismissed by the first Appellate Court as barred by limitation?

II. Whether the reasons recorded by the first Appellate Court on the point of limitation for reversing the findings recorded by the trial Court would amount to incorrect appreciation of the pleadings and the relevant provisions under The Limitation Act, 1963?

III. In the event the plaintiff succeeds in proving the absolute ownership, whether he would be entitled to seek possession as prayed?

IV. Whether the findings recorded by the first Appellate

Court on the claim to protect possession under Section 53A of The Transfer of Property Act, 1882 ('the said Act') by defendant no. 4 is sustainable, in the absence of specific findings satisfying the parameters under Section 53A of the said Act?

3. Learned advocate appearing for respondent nos. 1A to 1E and 4 waives notice.
4. In addition to Court notice, learned advocate for the appellant shall serve the remaining respondents by private notice and file affidavit of service.
5. Call for record and proceedings. Printing is dispensed with.
6. Learned advocate for the appellants shall file private paper-book within a period of one year.
7. The issue of abatement of the second appeal, if any, in view of death of the deceased appellant is kept open.

CIVIL APPLICATION NO. 1346 OF 2008 AND CIVIL APPLICATION NO. 1344 OF 2008:

8. These applications are for stay of the impugned decree. By the

impugned decree, the trial Court's decree in favour of the plaintiff is set aside and the suit is dismissed. Hence, there is no question of granting any stay to the impugned decree.

9. Applications are therefore dismissed.

10. Applicants are at liberty to file appropriate application for appropriate interim relief.

INTERIM APPLICATION NO. 10261 OF 2024 AND INTERIM APPLICATION NO. 10259 OF 2024:

11. Issue notice to respondents, returnable on 21st February 2025.

12. Learned advocate appearing for respondent nos. 1A to 1E and 4 waives notice.

13. In addition to Court notice, learned advocate for the appellants shall serve the remaining respondents by private notice and file affidavit of service before the next date.

[GAURI GODSE, J.]