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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 653 OF 2024
WITH
INTERIM APPLICATION NO. 14006 OF 2024**

Samratsinh Pruthviraj Shinde and others... Appellants/Applicants

Vs.

Aabidali Shamshuddin Bargir ... Respondent

Mr. Pralhad Paranjape a/w. Mr. Yogesh Patil a/w. Mr. Yash Tembe and
Ms. Tirtha Pawar for the Appellant/Applicant.

Mr. Chetan G. Patil a/w. Mr. Bhushan S. Jadhav for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 25th OCTOBER 2024

ORDER :

1. Due to network issues the soft copy is not accessible. Learned counsel for the appellants has tendered hard copy of the Second Appeal and Interim Application which are taken on record.

2. Heard learned counsel for the parties. Second appeal is admitted on the following substantial questions of law :

(i) Whether the First Appellate Court erred in adjudicating the document dated 4th April 2012, as a voidable document at the instance of the RBI ?

(ii) Whether the finding recorded by the trial court that the document dated 4th April 2012 is a void document is erroneously reversed by the First Appellate Court by ignoring the provisions of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 and in particular clause (a) of Rule (4) of the said Regulations ?

(iii) After the document dated 4th April 2012 is held to be a void document for contravention of the provisions of the Foreign Exchange of Management Act, 1999 and the Regulations framed thereunder, whether defendant nos. 5 and 6 can claim any right, title and interest in the suit property based on the documents executed by the vendors of the document dated 4th April 2012?

(iv) Whether the findings recorded by both the courts in disbelieving the plaintiffs' case of being in possession is only based on the registered documents and whether the said findings would be sustainable in the absence of any cogent evidence on record to believe case of defendant nos. 5 and 6 of being in possession ?

(v) In view of the legal principles settled by the Hon'ble Apex court in the case of *Kewal Krishan vs. Rajesh Kumar and Others*¹ whether the plaintiffs were required to seek a declaration that the document dated 4th April 2012 was a void document ?

(vi) Whether the plaintiffs are entitled to seek declaration of subsequent documents in favour of defendant nos. 5 and 6 in the absence of any specific declaration sought for with regard to the original document dated 4th April 2012 ?

3. Learned Advocate for the respondent nos. 5 and 6 waives notice.
4. In addition to court notice, learned Advocate for the appellants to serve the remaining respondents by private service and file service affidavit.
5. Call for record and proceedings.
6. Printing is dispensed with.
7. Learned Advocate for the appellants shall file private paper book within one year from today.

¹ 2021 SCC OnLine SC 1097

Interim Application No. 14006 of 2024

8. Rule on interim relief in terms of prayer clause (a) and (b) is made returnable on 28th February 2025.
9. Learned Advocate for respondent nos. 5 and 6 waives notice.
10. In addition to court notice, learned Advocate for the appellants to serve the remaining respondents by private service and file service affidavit.
11. By way of ad-interim relief parties shall not create any third party rights in respect of the suit property.

[GAURI GODSE, J.]