



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.371 OF 2023
WITH
CIVIL APPLICATION NO.8708 OF 2023 IN SA/371/2023
WITH
CIVIL APPLICATION NO. 927 OF 2025 IN SA/371/2023**

Gulabbai Ramrao Gaikwad Through General Power of
Attorney Vinayak Laxmanrao Hiwale

VERSUS

Sanjay Baldevdas Shah and others.

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Advocate for Applicant : Mr. V B. Madan, Mr.V.N. Rathod h/f
R.S. Potdar

Advocate for Respondent no.15 : Mr. Anand Bhandari &
R.F.Totla

Advocate for Respondent no.16 : Mr. Ajit B. Kale

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**WITH
CIVIL APPLICATION NO. 1184 OF 2025 IN SA/371/2023**

Vinayak Laxmanrao Hiwale

Versus

Gulabbai Ramrao Gaikwad and others

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Advocate for Applicant : Mr. V B. Madan

Advocate for Respondent no.15,16 : Mr. Anand Bhandari &
Mr. R.F.Totla

Advocate for Respondent no.17 : Mr. Ajit B. Kale

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CORAM S.G. Chapalgaonkar, J.

Reserved on January 28, 2025.

Pronounced on February 06, 2025.

ORDER :-

1. The appellant/original plaintiff has filed this
appeal aggrieved by the judgment and decree dated
13.02.2023 passed in R.C.A. no.50 of 2021 upholding the

judgment and decree in Regular Civil Suit No.459 of 2012 (old Special Civil Suit No.631 of 2010) thereby dismissing claim for specific performance of contract and possession of the suit property bearing gat no.57 situated at village Satara.

2. The appellant instituted Regular Civil Suit No.459 of 2012 seeking the relief of specific performance of contract and possession of the suit property alleging that one Motilal Dwarkadas was the original owner of the suit land. He executed an agreement to sell dated 11.9.1988 in favour of the appellant/plaintiff and agreed to sell the suit land for consideration of Rs.2.00 Lakhs. He handed over possession of the suit property to the plaintiff, however, sale-deed could not be executed till 10.12.2021 i.e. date of death of Motilal. Plaintiff was not aware about legal heirs of Motilal. Plaintiff came across news paper publication dated 21.5.2010 in daily Lokmat, wherein it was informed that defendants are legal heirs of deceased Motilal and are willing to transfer the land in favour of clients of Advocate Mr. S.B. Wavare and Madhav Munde. Accordingly, plaintiff got knowledge of legal heirs of Motilal. She requested them to execute the sale-deed, but they refused. Ultimately, she filed suit seeking specific performance of the contract and possession. Trial Court

dismissed the suit, hence plaintiff filed appeal, same is also dismissed.

3. Pertinently, R.C.A. was filed before the learned District Judge in the name of plaintiff through her power of attorney holder namely Vinayak Laxmanrao Hiwale. Present Second Appeal is also filed through the same power of attorney holder. Now appellant has filed Civil Application no.927 of 2025 seeking permission to withdraw Second Appeal no.371 of 2023 contending that she has terminated/cancelled the power of attorney executed in favour of Mr. Vinayak Laxmanrao Hiwale, eventually issued paper publication dated 26.10.2024 in daily 'Lokmat'.

4. At this stage, Mr. Vinayak Laxmanrao Hiwale/General Power of Attorney Holder of the appellant filed Civil Application no.1184 of 2025 with a prayer that he may be permitted to transpose himself as an appellant in the pending Second Appeal as he has purchased part of suit property. The applicant contends that he purchased 6R land from gut no.57 under the registered sale-deed dated 1.7.2019 from appellant. As such, he claims to have acquired independent title and interest in the suit property. Consequently, he is entitled to prosecute appeal in his personal capacity. The applicant contends that alleged

revocation/cancellation of power of Attorney is illegal. Hence, appellant has no right to withdraw the appeal.

5. In the aforesaid background of factual matrix, learned advocates appearing for respective parties advanced their submissions in pursuance to the respective prayers made in civil applications.

6. Mr. A.B. Kale, learned advocate appearing for the respondent no.16 submit that, power of attorney holder does not possess independent right to prosecute the second appeal, once the appellant/original plaintiff is not desirous to continue with the proceeding/Second Appeal. He submits that, power of attorney holder is taking disadvantage of the authority that was given to him by the appellant/plaintiff. Mr. Kale would further invite attention of this Court to the alleged sale-deed of 2019 executed by the appellant in favour of the power of attorney holder and points out that, in fact, appellant/original plaintiff had no title over suit property. In fact, she was prosecuting her claim for specific performance of the contract based on agreement to sale as to the suit property. She never derived title from the original owner or his legal representatives, but the power of attorney holder is claiming right of the ownership through the appellant in respect of 6R land out of the suit property. Mr. Kale relying

upon the observations of the Supreme Court of India in case of **Ghanshyam Vs. Yogendra Rathi reported in (2023) 7 SCC 361** submit that agreement to sale or power of attorney are not the documents of Title and as such the right title and interest of immovable property do not stand transferred in absence of registered deed as contemplated under section 54 of the Transfer of Property Act.

7. Undisputedly, appellant is litigating for specific performance of contract based on the agreement to sell dated 11.9.1988 executed by one Motilal Dwarakadas Saraf in respect of 2Acres of land from gat no.57 situated at Satara. In that view of the matter, power of attorney holder cannot claim any right over 6R land based on alleged sale-deed dated 1.7.2019 executed by the appellant. Appellant cannot have title to transfer the land in favour of power of attorney holder in gat no.57 unless she succeeds in the litigation and L.Rs. of original vendor executes document of title in her favour. Therefore, prima facie, the power of attorney holder cannot claim any right in the suit property on the basis of registered sale-deed.

8. The power of attorney dated 12.12.2019 executed by appellant in favour of Mr. Vinayak Laxmanrao Hiwale merely gives him authority for prosecuting legal proceedings

on behalf of appellant in respect of the suit property. He does not get independent right in the suit property. The appellant claims to have revoked the power of attorney by issuing legal notice dated 8.10.2024 and paper publication dated 25.10.2024. In that view of the matter, power of attorney holder cannot claim independent right to prosecute Second Appeal against the wish of appellant to withdraw the same. The Power of attorney holder may avail his independent remedies by filing appropriate proceeding as permissible under law on the basis of the documents relied by him. However, there is no reason to transpose him as appellant and permit him to prosecute second appeal, which is sought to be withdrawn by the appellant. The appellant is personally present before this Court and submit that she wishes to withdraw the second appeal.

9. In the result, Civil Application no.927 of 2025 is allowed in terms of prayer clause 'B'. Second Appeal No.371 of 2023 stands **dismissed** as withdrawn. Civil Application no.1184 of 2025 is **rejected**. Pending civil application, if any, also stands disposed of.

(S. G. CHAPALGAONKAR)
Judge

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