



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

**SECOND APPEAL NO. 179 OF 2025**

Shivanand Dhulappa Mathpati .. Appellant

**Versus**

Parween Sultana Abdul Rauf Take  
and others .. Respondents

Shri S. V. Natu, Advocate h/f Shri A. A. Joshi, Advocate for the Appellant.

Shri Satish S. Manale, Advocate for the Respondent Nos. 1 to 3.

**CORAM : SHAILESH P. BRAHME, J.**

**CLOSED FOR ORDER ON : 30.07.2025**  
**ORDER PRONOUNCED ON : 20.08.2025.**

**FINAL ORDER :**

. Heard both sides.

2. The present appeal is emanating from the proceedings under Order XXI Rule 97 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the 'C.P.C.') in Regular Darkhast No. 07 of 2022. It is contended by the appellant that his objection U/O XXI Rule 97 of the C. P. C. was summarily rejected by the Executing Court, which was confirmed by the lower Appellate Court and he wanted to lead evidence. One of the possibilities was remand of the matter to the Executing Court. I made it clear to the parties to decide it

finally, instead of admitting the appeal. I have heard both sides at length.

3. The respondent Nos. 1 to 3 are original plaintiffs cum decree holders. The respondent Nos.4 to 8 are the original defendants cum judgment debtors. The parties are referred as per their original status in Spl. C. S. No. 164 of 2008.

4. Plaintiffs had filed Spl. C. S. No. 164 of 2008 for possession, mesne profit and mandatory injunction of demolition of the house of the defendant Nos. 4 and 5. The defendants contested the suit. It was partly decreed by the Trial Court on 29.09.2011. The suit was substantially dismissed, hence plaintiffs preferred R.C.A. No. 220 of 2012. It was partly allowed vide judgment dated 20.08.2019, directing the defendants to deliver vacant possession of 10R land as shown in the measurement map at Exhibit 102 by demolishing constructions of the defendant Nos. 4 and 5. A decree of mesne profit was also passed. Plaintiffs lodged R. D. No. 07 of 2022 against the defendants. Appellant – Shivanand filed application at Exhibit 22 U/O XXI Rule 97 of the C. P. C. It was rejected by the executing court on 15.02.2025. Being aggrieved, R.C.A. No. 38 of 2025 was filed, which was also dismissed on 27.03.2025.

5. In the present second appeal substantial questions of law recorded by this Court vide order dated 05<sup>th</sup> May, 2025 are pressed into service and argued by the learned counsel Mr.

Sharad V. Natu by the appellant. It is contended by the appellant that he purchased a plot No. 2 admeasuring 1653.75 square feet of gut No. 93 by registered sale deed dated 04.02.2008 from his wife Mahadevi. He and his predecessor in title were not party to the earlier litigation. If the decree is executed, he will be dispossessed. It is contended that he has independent right, title and interest, which needs adjudication by the executing court.

6. Learned counsel Mr. Sharad Natu submitted that application Exhibit 32 was decided summarily without extending opportunity to lead evidence and in slipshod manner. There is violation of principles of natural justice. It is argued that he is not bound by the decree and his right, title and interest have not been decided in earlier round of litigation. It is further canvassed that he is entitled to defend the decree independently because the defendant No. 3, who is purchaser in title failed to take necessary stand and pleas in suit. Therefore, objective scrutiny needs to be undertaken, which is not done by both the Courts below. It is contended that appellant is bonafide purchaser for value without notice.

7. Per contra, learned counsel Mr. Manale, for the respondent Nos. 1 and 2 submitted that both the Courts concurrently decided against the appellant and no substantial question of law arises in the appeal. It is submitted that appellant was aware of earlier litigation. He was fence sitter. As he did not take timely

steps against his predecessor in title, especially the defendant No. 3 – Ramrao. His immediate predecessor in title is his own wife Mahadevi. It is vehemently contended that when defendant No. 1 – Ramlal had no salable title, alienation by him in favour of the defendant No. 3 – Ramrao and further alienation are bad in law. Plaintiffs have acquired title of 41R of land vide sale deed dated 24.10.1996 executed by the defendant No. 1 – Ramlal in their favour, which is prior in time. It is contended that appellant is not a bonafide purchaser.

8. The defendant No. 1 – Ramlal Tiwari was owner of land gut No. 93 admeasuring 9H 34R situated at village Arvi, Tq. Latur. He alienated different parcels of his land to the parties to the litigation, which gave rise to the litigation. Following are the material events, which need consideration.

| <b>Sr. No.</b> | <b>Date</b> | <b>Events</b>                                                                  |
|----------------|-------------|--------------------------------------------------------------------------------|
| 01.            | 24.10.1996  | Sale deed executed by defendant No. 1 - Ramlal to the plaintiffs.              |
| 02.            | 01.06.1996  | Sale deed executed by defendant No. 1 – Ramlal to the defendant No. 3 - Ramrao |
| 03.            | 16.02.2004  | Sale deed executed by defendant No. 3 – Ramrao to Mahadevi.                    |
| 04.            | 04.02.2008  | Sale deed executed by Mahadevi to the appellant.                               |
| 05.            | 22.09.2008  | Filing of Spl.C.S. No. 164 of 2008.                                            |
| 06.            | 29.09.2011  | Judgment passed in Spl. C. S. No. 164 of 2008.                                 |
| 07.            | 20.08.2019  | Judgment passed in R.C.A. No. 220 of 2012.                                     |

9. Neither appellant, nor his predecessor in title, his own wife Mahadevi were party to Spl. C. S. No. 164 of 2008 and R.C.A. No. 220 of 2012. But Mahadevi's predecessor in title was defendant No. 3 – Ramrao. Admittedly, sale deed executed on 24.10.1996 by the defendant No. 1 – Ramlal in favour of the plaintiffs for 41R out of gut No. 93 is prior in time. All other sale transactions from the said gut number are subsequent.

10. Plaintiffs purchased 41R of land from gut No. 93 from the original owner i. e. defendant No. 1 – Ramlal vide registered sale deed. Interestingly, the defendant No. 3 – Ramrao Pandurang Patil was the attesting witness to the sale deed. As it was registered sale deed it can be presumed that public at large had notice of the transaction. Thereafter, defendant No. 1 – Ramlal sold part of the land to the defendant No. 3 – Ramrao.

11. Defendant No.3 Ramrao in turn sold 1655 square feet area to appellant's wife Mahadevi on 16.02.2004. Then Mahadevi sold that area to the appellant on 04.02.2008. The vendor of defendant No.3 and inter alia appellant had no saleable title. Because already defendant No.1 Ramlal had alienated 41 R. of land to the plaintiffs.

12. Both Courts below have recorded concurrent findings of facts that sale deed dated 24.10.1996 is prior in time and has not been questioned by anybody. By implication of Section 48 of

Transfer of Property Act, the subsequent alienations are of no consequences. Thus, rights of subsequent purchasers would not co-exists with the rights or the interest created in favour of the plaintiffs. There is no perversity in the findings recorded by Courts below.

13. The plea of the appellant that he was bonafide purchaser for value and without notice has also been examined by both Courts below. In view of Section 48, sale deed dated 24.10.1996 issued in favour of the plaintiffs would prevail. It is difficult to comprehend that appellant or Mahadevi or defendant No.3 were not aware of earlier sale transaction. Being registered sale deed, the public at large is presumed to have notice of sale deed 24.10.1996. Subsequent transferee ought to have conducted due search of title before purchasing part of the suit land. They had every occasion to learn that defendant No.1 Ramlal had no saleable title. In the absence of due inquiry and search, the subsequent transferee are not bound to succeed on precious plea of bonafide purchaser.

14. It is relevant to notice that defendant No.3 Ramrao was attesting witness of sale deed dated 24.10.1996. Despite that, he purchased part of Gut No.93 from defendant No.1 on 01.06.1996 and further endeavoured to transfer the same to Mahadevi. When Court Commissioner was measuring the suit land, appellant and his wife Mahadevi were present for the measurement. It has come on record that defendant Nos.2 to 5

are friends of original owner defendant No.1 Ramlal. The conduct of the appellant and defendants is doubtful and they cannot be said to be innocent purchasers.

15. The remedy of the appellant is not to take recourse to Order 21 Rule 97 of the C.P.C. He should have taken action against defendant Nos. 1 and 3. His inaction creates doubt over his claim. No case is made out to show that he has independent right and title in the suit land. The decree passed in favour of the plaintiffs has become final and has to be executed.

16. Appellant has to blame himself for not conducting proper search of title before purchasing the land from the person who had no saleable interest. Now, it is not open for him to obstruct the execution with a plea that he could have defended the suit filed by the plaintiffs on the grounds which were not agitated either by defendant No.1 or defendant No.3. He was taking chances. He is guilty of lapses. Now, he has to suffer the consequences. I am of the view that no case is made out for causing any interference in the orders passed by Courts below. It is an abuse of process of law to resort to Order 21 Rule 97 of the C.P.C. The plaintiffs are waiting for possession of 10 R. land since judgment of Lower Appellate Court passed on 20.08.2019.

17. Learned counsel Mr. Natu seeks to rely on following judgments :

(a) ***Gaurihar Baburao Batane and others Vs. Ashok***

***Banudas Gajare and another ; 2000 SCC OnLine Bom 220.***

If a case is made out by the objector then the procedure contemplated under Rule 101 would be followed. The ratio cannot be interpreted to mean that no sooner than objection is raised in execution by third person entire procedure contemplated by Rule 101 or 105 has to be followed without examining independent right of objector. It is distinguishable on facts.

(b) ***Nusserwanji E. Poonegar and others Vs. Shirinbai F. Bhesania and others ; 1984 SCC OnLine Bom 6.*** This judgment will also not help the appellant. The facts are distinguishable from the case at hand. It is not that every objection received in execution would be treated to be one under Order 21 Rule 97 and it is mandatory to undertake objective scrutiny as per Rule 101.

18. Learned counsel Mr. Manale has relied on the judgment in the case of ***Kaushik Premkumar Mishra and another Vs. Kanji Ravaria @ Kanji and another ; 2024 AIR (SC) 3766.*** It is useful to refer paragraph No.35 which is as follows :

*“The doctrine of bona fide purchaser for value applies in situations where the seller appears to have some semblance of legitimate ownership rights. However, this principle does not protect a subsequent purchaser if the vendor had already transferred those rights through a prior sale deed. In a case where the vendor deceitfully executes a second sale deed 26 years after the initial transfer, without disclosing the earlier*

*transaction and without any ongoing litigation regarding the property, the subsequent purchaser cannot claim the benefits of a bona fide purchaser. Essentially, if the vendor's rights were already severed by the first sale, any later sale deed made without transparency and in bad faith is invalid. The subsequent purchaser, even if unaware of the prior sale, cannot be considered bona fide because the vendor no longer had the legal right to sell the property. Thus, the protection afforded by the bona fide purchaser doctrine is nullified by the vendor's deceitful conduct and the pre-existing transfer of rights. This ensures that the original purchaser's rights are upheld and prevents unjust enrichment through fraudulent transactions.”*

Both Courts below have rightly referred to above ratio and I concur with their view.

19. The substantial questions of law which are posed for consideration before me are found to be meritless. Hence, second appeal is dismissed.

**[ SHAILESH P. BRAHME J. ]**

*bsb/Aug. 25*