



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 339 OF 2022

MEERABAI SHIVAJI KARLE L.RS. SUNIL AND OTHERS
VERSUS
ARUNSINHA DESHRAJSINHA THAKUR AND ANOTHER

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Advocate for Appellants :
Mr. S. D. Jayabhar h/f. Mr. Jayabhar Dattatraya R.
Advocate for Respondent No.1 : Mr. B. N. Palve

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WITH
CIVIL APPLICATION NO. 6464 OF 2025
IN SA/339/2022

WITH
CIVIL APPLICATION NO. 8991 OF 2025

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CORAM : ARUN R. PEDNEKER, J.
DATE : 04.11.2025

PER COURT:

1. Heard.
2. For the reasons stated in Civil Application No.6464 of 2025 for bringing legal representatives of appellant no.1 on record, the civil application is allowed.
3. The present Second Appeal is filed challenging the Judgment and Decree of the Civil Judge Senior Division in R.C.S. No.11/2011 and Judgment dated 02.05.2019 passed by the

appellate court dismissing the appeal filed by the present appellants and upholding the decree passed by the Civil Judge Senior Division in R.C.S. No.11/2011 under Judgment and order dated 26.02.2015.

4. The appellants have raised following questions of law, as under:

“SUBSTANTIAL QUESTIONS OF LAW:

(XVII) Whether suit filed by the plaintiff was maintainable as per law ?

(XVIII) Suit for cancellation of Sale deed dated 09.02.2010 entered into between defendants no.1 and defendant No.2 to 4, to which plaintiff is not party, whether such suit is maintainable when plaintiff is not party to sale deed ?

(XIX) Whether an issue framed as Issue No.5 by learned trial Court with respect to perpetual injunction is perverse, when no such claim is made in pleadings by plaintiff seeking grant of perpetual injunction ?

(XX) Whether learned appellate Court was justified in making correction in absence of cross appeal or cross objection by plaintiff.

(XXI) Whether a suit seeking cancellation of sale deed be filed by a third party or stranger affecting rights of parties in sale deed as per Specific Relief Act ?

(XXII) Whether a registered Sale deed can be cancelled in suit by third party / stranger to sale deed as per law ?

(XXIII) Whether agreement to sale be ignored, when parties have entered into possession of suit premises on the basis of same.”

5. The learned counsel in course of arguments has primarily raised the legal submissions on questions of law, “whether the suit for cancellation of the sale deed dated 09.02.2010 entered into between defendant no.1 and defendants no.2 to 4, to which plaintiff is not a party, whether such suit is maintainable at the instance of some third party when plaintiff is not a party to sale deed ? ”

Substantiating the said question of law he has relied upon the Judgment of the Hon’ble Supreme Court in the case of **Hussain Ahmed Choudhury and others Vs. Habibur Rahman (Dead) Through Lrs and others, AIR Online 2025 SC 508.**

6. Before dealing with the question of law raised, the brief facts giving rise to the Second Appeal are noted as under:

The suit property consists of agricultural land of admeasuring 1H. 42 R. as particularly described in the plaint. The suit property was originally owned by Sambhaji Sathe and others. The property is stated to be purchased by Captain Warran by a registered sale deed from Sambhaji Sathe and others. He purchased 23.66 R. portion of the land on 12.09.2007 and, thereafter, he purchased 23.17 R. portion of land on 22.03.2008 by two different sale deeds from the original owners.

Thereafter, on 11.11.2009, the plaintiff purchased the suit property (46.83 R. portion) from Captain Warran by registered sale deed.

7. It is stated that on 09.02.2010, defendant no.1 executed sale deed of part of the suit property in favour of defendants no.2 to 4 for Rs.25,000/- and that the defendants started construction in the suit property in March-2010. As such, the plaintiff filed the suit for possession and declaration that the documents of conveyance executed by defendant no.1 in favour of defendants no.2 to 4 are null and void.

8. The trial court decreed the suit as under:

ORDER

- 1. Suit is hereby decree with costs as under.*
- 2. The sale deed executed on 9-2-2010 in favour of defendant nos.2 to 4 by defendant no.1 Exh.65 is hereby cancelled being illegal.*
- 3. The Sub-Registrar, Ahmednagar be informed accordingly.*
- 4. The plaintiff is entitled for the possession of the suit property from defendants no.2 to 4.*
- 5. Separate inquiry be make under Order 20, Rule 12 for mesne profit from the date of suit till receiving possession.*
- 6. The defendants no.2 to 4 perpetually restrained from interfering into the possession of the plaintiff.*
- 7. Decree be drawn accordingly."*

9. Thereafter, the appeal was preferred by the present appellants before the appellate court and the appellate court formulated the following points for discussion and has answered accordingly, as under:

Sr. No.	Points	Findings
1.	Whether the sale deed executed in favour of defendants no.2 to 4 is valid ?	No
2.	Whether the sale deed executed in favour of the plaintiff is valid ?	Yes
3.	Whether the plaintiff is entitled for the relief sought for ?	Yes
4.	Whether any interference is warranted in the impugned judgment and decree ?	Judgment and decree needs to be modified
5.	What order and decree ?	The appeal is dismissed as per final order

10. The appellate court dismissed the appeal by holding that the sale deed executed by defendant no.1 in favour of defendants no.2 to 4 is not a valid sale deed and the sale deed executed in favour of the plaintiff by Captain Warran is valid.

11. Challenging the decree passed by the appellate court the present Second Appeal is filed on the above substantial questions of law.

12. It is the submission of the learned counsel for the appellants that the plaintiff is third party to the sale deed dated 09.02.2010 executed in favour of defendants no.2 to 4 by defendant no.1 and it cannot be cancelled at the instance of the plaintiff as the plaintiff is not a party to the sale deed. Such a relief can only be claimed by the parties to the sale agreement. He submits that the third party can file a suit only seeking a declaration that the sale deed is not binding upon them but they cannot seek a cancellation of the sale deed. He relies upon the Judgment of Hussain (supra), specifically, at paragraph no.22, 30 to 33 and submits that the Hon'ble Supreme Court has observed that third party cannot seek cancellation of the sale deed.

13. Having perused the Judgment [Hussain supra], more particularly, at paragraph no.30 the Hon'ble Supreme Court has observed that a plaintiff who is not a party to the decree or the document is not obligated to sue for its cancellation. This is because such an instrument would neither be likely to affect the title of the plaintiff nor be binding on him.

14. In the instant case, the plaintiff has filed the suit seeking cancellation of the sale deeds for the reason that if the sale deed is left open it may cause harm to him. So also, the defendants based on the sale deeds were attempting to construct on the land

which was sold in favour of the plaintiff. The Judgment relied upon by the appellants does not bar the plaintiff who is not a party to the document to apply for cancellation of sale deed. The Judgment only hold that it is not obligatory for the third party to seek cancellation of sale deed and there is no bar under the law that the plaintiff cannot seek for cancellation of sale deed, more so, when the sale deed if left open without being cancelled would prejudicially affect the plaintiff's rights over the properties. Thus the question of law as raised at para 5 does not arise for consideration.

15. In the instant case, the plaintiff has applied for declaration of ownership rights and both the court have held that the plaintiff is the owner of the suit property and the sale deed executed in favour of the plaintiff is a valid one.

16. As regards the second question, that the appellate court has modified the decree without appeal by the respondent, it is to be noted that the decree is not modified to the detriment of the petitioners and no prejudice is caused to the petitioners.

17. Considering the same, no substantial question of law arises for consideration.

18. The Second Appeal stands dismissed as no substantial question of law is involved in the Second Appeal.

18. In view of dismissal of the Second Appeal, Civil Application No.8991 of 2025 also stands disposed of.

[ARUN R. PEDNEKER, J.]

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