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

**945 SECOND APPEAL NO. 879 OF 2018
WITH
CIVIL APPLICATION NO. 5063 OF 2025
IN SA/879/2018**

**LATE KAKASAHEB MHASKE MEDICAL FOUNDATION,
AHMEDNAGR AND OTHERS**

VERSUS

NAGAPUR MASJID TRUST THR. ITS TRUSTEE AND OTHERS

....

Mr Anil Sakhare, Senior Advocate i/b Mr Y. V. Kakade, Advocate for appellants

Mr A. M. Gholap, Advocate for respondent Nos.1, 4 and 5

Ms J. S. Navale, Advocate h/f Mr V. D. Salunke, Advocate for applicant/intervenor in CA/5063/2025

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 16th July, 2025

PER COURT:

1. Heard learned Senior Advocate Mr Sakhare, instructed by Advocate Mr Kakade, learned counsel for the appellants and Advocate Mr Gholap, learned counsel for respondent Nos.1, 4 and 5.

2. This appeal under Section 100 of the Code of Civil Procedure challenges the judgment and decree dated 10/10/2018 in Regular Civil Appeal No.118/2017, passed by the District Judge-6, Ahmednager, by which the judgment and decree passed by the Court

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of Civil Judge Senior Division, Ahmednagar in Regular Civil Suit No.273/2005 dated 15/03/2017 is reversed.

3. By order dated 02/05/2025, notices were issued to the respondents on the proposed substantial questions of law mentioned in the said order at paragraph No.12. In response to the notice, Advocate Mr Gholap, learned counsel for respondent Nos.1, 4 and 5 has made submissions.

4. Having regard to the submissions advanced by learned counsel for the appellants as well as the respondents, I am of the considered opinion that the substantial questions framed vide the order dated 02/05/2025 needs consideration and the appeal needs to be admitted.

5. The appeal is **ADMITTED** on the following substantial questions of law, which are also mentioned in the order dated 02/05/2025 :-

[1] Whether the learned Lower Appellate Court has committed grave error in law by exceeding jurisdiction by allowing appeal in absence of pleadings by granting decree of possession in the absence of plea of denial of title of plaintiff in suit ?

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[2] Whether the notice of termination of tenancy dated 21.08.2004 before filing the suit is invalid being contrary to the terms and conditions of the mortgage deed executed by respondent/plaintiffs ?

[3] Whether the judgment and decree of first appellate court militates with provisions of Section 111 of the Transfer of Property Act, in absence of specific disclaimer of landlords title ?

[4] Whether the impugned decree is hit by variance between the pleadings and proof and whether relief can be granted at variance with cause of action pleaded in suit ?

[5] Whether the impugned decree of possession is beyond pleadings and in absence of cause of action?

[6] Whether impugned decree is perverse and suffers from lack of foundation in pleadings and evidence ?

6. In view of the order dated 02/05/2025 passed on Civil Application No.13969/2018 with Civil Application No.4553/2025, granting direction to both the parties to maintain status-quo, by way of interim order, parties are directed to maintain status-quo during the pendency of the appeal.

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7. In view of the controversy involved, particularly the submissions advanced by learned counsel for the appellants that the suit property is being used for running three colleges, hostels and hospitals, a request is made for early hearing of the instant second appeal.

8. Considering the entire controversy involved and the submissions advanced, this second appeal needs to be heard finally at an earlier date.

9. Put up the matter on 29/08/2025 for final hearing.

10. The appellant is directed to place on record a private paper book containing all the pleadings, evidence and judgments of the Courts below, before the date of hearing by supplying advance copy of the same to learned counsel for the respondents.

(PRAFULLA S. KHUBALKAR, J.)

sjk