

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 16 OF 2025
WITH
INTERIM APPLICATION NO. 320 OF 2025
IN
SECOND APPEAL NO. 16 OF 2025**

Vishram Vijayrao Lomate

.....Appellant

Vs.

Dadaso Ramesh Kokate and ors

.....Respondents

Mr. Kuldeep Nikam for the appellant

CORAM : GAURI GODSE, J.

DATE : 15th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellant. The second appeal is admitted on the following substantial questions of law:

I. Whether the findings recorded by both the Courts on the suit agreement being enforceable against defendant no. 2 would be sustainable in the absence of any evidence to indicate that defendant no. 2 was aware about the unregistered agreement dated 12th March 2013 in favour of the plaintiff?

II. Whether for deciding the issue of due diligence on the part of defendant no. 2, the important aspect regarding the registered agreement in favour of the plaintiff pertaining to Gat No. 187 and not the suit property i.e. Gat No. 189 should have been appreciated by both the Courts?

III. Whether it was necessary to record findings on defendant no. 2's title based on the agreement at Exhibit 70 in favour of defendant no. 2 for deciding the enforceability of the agreement in favour of the plaintiff against defendant no. 2 or whether defendant no. 2 would have been entitled to seek protection under Section 53-A of The Transfer of Property Act, 1882?

IV. Whether the findings recorded by both the Courts on defendant no. 2's right and he being bonafide purchaser without notice for value would amount to incorrect appreciation of evidence on record?

2. In addition to Court notice, learned advocate for the appellant shall serve the respondents by private notice and file affidavit of service.

3. Call for record and proceedings. Printing is dispensed with.

4. Learned advocate for the appellant shall file private paper-book within a period of one year.

INTERIM APPLICATION NO. 320 OF 2025:

5. Rule on interim relief in terms of prayer clause (b) is made returnable on 26th March 2025.

6. In addition to Court notice, learned advocate for the appellant shall serve the respondents by private notice and file affidavit of service before the next date.

7. Till next date, there will be ad-interim stay in terms of prayer clause (b) subject to the appellant not creating any third party rights in respect of the suit property or parting with possession in favour of any third party.

[GAURI GODSE, J.]