

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 403 OF 2024
WITH
INTERIM APPLICATION NO. 9956 OF 2024
IN
SECOND APPEAL NO. 403 OF 2024**

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Ashok Devendra Goyal ... Appellant/Applicant
vs.
Vijay Dayabhai Desai and Anr. ... Respondents

Mr. Himanshu Desai a/w Paresh Naigahde i/b Rahul Sagar for the
Appellant/Applicant.

Mr. Rajesh Kachare a/w Sonal Dabholkar for the Respondents.

CORAM : GAURI GODSE, J.

DATED : 11th FEBRUARY 2025

ORDER:

1. Heard. The second appeal raises following substantial
questions of law:

(I) In the absence of any specific findings
recorded with regard to knowledge about the
pendency of the suit and agreement in favour
of the decree holder and in the absence of
any knowledge to Devyog builders about the
pendency of the suit and agreement

executed in favour of the decree holder, whether the first appellate court's findings that the appellant being director of Devyog builders was aware about the proceedings and the agreement would be sustainable?

(II) Whether the findings recorded by the first appellate court holding that the appellant was not a bonafide purchaser for value without notice is based on correct appreciation of the evidence on record?

(III) Whether the application filed by the appellant under Rule 101 of Order XXI of CPC could have been decided without recording specific findings of facts on the knowledge of Devyog builders with regard to the pendency of Special Civil Suit No.505 of 2002 and the agreement in favour of the decree holder?

(IV) Whether the findings recorded by first appellate court to reverse the trial Court's findings would amount to correct

appreciation of the pleadings and evidence on record with reference to the appellant's contention of being a bonafide purchaser for value without notice?

(V) Whether the objections raised by the appellant under Rule 101 of Order XXI of CPC could have been decided in the absence of the judgment debtor through whom the appellants are claiming right title interest in the suit property?

2. Issue notice for final disposal of the second appeal on the aforesaid questions of law, returnable on 9th April 2025.
3. Mr. Rajesh Kachare and Sonal Dabholkar waive notice for the Respondents.
4. The compilation of documents submitted by the learned counsel for the appellant is taken on record.

INTERIM APPLICATION NO. 9956 OF 2024 :

5. Rule on interim relief is made returnable forthwith.
6. Mr. Rajesh Kachare and Sonal Dabholkar waive notice for the Respondents.

7. During the pendency of the second appeal the further proceedings in the Special Darkhast No.105 of 2011 shall remain stayed.
8. The parties to this second appeal shall not create any third party rights in respect of the suit property
9. Interim application is disposed of.

(GAURI GODSE, J.)