

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.435 OF 2024
WITH
INTERIM APPLICATION NO.10621 OF 2024

Digambar Pandurang Pawtekar [deceased through legal heirs] 1(a) Surekha Vilas Kapale [Since deceased] 1(b) Ratan Kantarao Jade & Ors.	...Appellants
Versus	
Purushottam Gopinath Waikar Charitable Trust by its authorized trustees 1(a) B. F. Bode & Ors.	...Respondents

Ms. Sangita Shrotri Vaidya a/w Ameya Borwankar, for the Appellants.
Mr. Surel Shah, Senior Advocate i/b Sandeep R. Waghmare, for
Respondent No. 2.

CORAM: MADHAV J. JAMDAR, J.
DATED: 14 JULY 2025

JUDGMENT:

1. Heard Ms. Sangita Shrotri, learned Counsel appearing for the Appellant and Mr. Surel Shah, learned Counsel appearing for the Respondent No.2.
2. Mr. Surel Shah, learned Senior Counsel states that Respondent No.1 is no more necessary party as the Respondent No.1 has sold the property to the Respondent No.2.
3. A learned Single Judge has admitted the Second Appeal on the following substantial questions of law.

“(i) Whether both the Courts ought to have framed an issue of jurisdiction of Civil Court, with regard to defendant's claim of defendant no. 3 having been inducted as tenant in respect of property no. 1A.

(ii) Whether both the Courts ought to have taken into consideration whether in view of the claim of tenancy of defendant no. 3 in respect of property no. 1A, Civil Court would get jurisdiction to decide the suit so far as property no. 1A is concerned?

(iii) Whether the first Appellate Court erred in not framing a point on determination of defendant no. 3's tenancy rights inspite of allowing the application for producing additional evidence and had taken on record copies of judgment and decree in RCS No. 937 of 1983 and the documents in respect of Small Causes Suit No. 2626 of 1975 by way of additional evidence?”

4. At the outset, Mr. Surel Shah, learned Counsel appearing for the Respondent No.2 states that the above substantial question of law No. (iii) is *inter alia* concerning not taking into consideration documents produced as additional evidence. He therefore states that Respondent No. 2 has no objection if by setting aside the impugned Judgment and Decree dated 20th April 2024 passed by the learned District Judge, Pune in Regular Civil Appeal No. 480 of 2015 the same is remanded back to the learned Trial Court. Ms. Shrotri-Vaidya, learned Counsel appearing for the Appellant states that the Appellant has no objection for the same.

5. Both the learned Counsel state that the Appeal before the learned Appellate Court after remand will be confined to suit property No.1A.

6. Accordingly, by consent of parties, the Judgment and Decree dated 20th April 2024 passed by learned District Judge-20, Pune in Regular Civil Appeal No.480 of 2015 is quashed and set aside to the extent of suit property No.1A and the said Regular Civil Appeal No.480 of 2015 is restored to the file of the learned District Judge-20, Pune. However, it is clarified that the said remand is only with respect to suit property Nos.1A. Thus, as far as the property No.1B is concerned, the said Judgment and Decree dated 20th April 2024 is maintained.

7. Till hearing of the said Regular Civil Appeal No. 480 of 2015, after remand, there shall be stay to the execution of the Judgment and Decree dated 15th June 2015 passed by the learned 2nd Joint Civil Judge Senior Division, Pune in Special Civil Suit No. 1502 of 2006.

8. As the said Appeal remanded before the First Appellate Court is of the year 2015, the learned First Appellate Court is requested to dispose of the First Appeal expeditiously within a period of 15 months from today.

9. In view of the disposal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

10. Both the parties to appear before the concerned First Appellate Court on 18th August 2025.

[MADHAV J. JAMDAR, J.]