

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 117 OF 2025
WITH
INTERIM APPLICATION NO. 1623 OF 2025
IN
SECOND APPEAL NO. 117 OF 2025**

Ningappa Bhavaku Kalkhambkar ... Appellant/Applicant

vs.

Balu Babaji Kamat (Since Deceased ... Respondent
through his heirs and legal
representatives)

Mr. Pradip Gole for the Appellant/Applicant.

Mr. Prajakt Arjunwadkar for Respondent No.1A

CORAM : GAURI GODSE, J.

DATED : 18th FEBRUARY 2025

ORDER:

1. Heard. This second appeal is admitted on the following substantial questions of law:

(I) When the plaintiff pleaded that there was a mortgage document executed in favour of the defendant, whether the plaintiff would be entitled to seek possession of the suit property without exercising his right of redemption?

(II) In the event the agreement dated 7th May 1970 is accepted as a document of mortgage as pleaded by the plaintiff, whether in the absence of any prayer for redemption of mortgage, the suit simplicitor for possession could have been decreed?

(III) Whether the agreement dated 4th April 1969 can be accepted as an agreement for sale as pleaded by the defendant, and whether based on the said agreement, the defendant would be entitled to seek protection under Section 53A of the Transfer of Property Act?

(IV) Whether for seeking protection under Section 53A of the Transfer of Property Act, the defendant has satisfied all the conditions contemplated under Section 53A of the Transfer of Property Act?

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2. Rule on interim relief in terms of prayer (a) is made returnable on 1st July 2025.
3. Mr. Prajakt Arjunwadkar waives notice for Respondent No.1A.
4. In addition to Court notice, learned advocate for the applicant

to serve the remaining respondents, by private notice and file affidavit of service before the next date.

5. During the pendency of the application, there will be ad-interim stay in terms of prayer clause (b).

6. The parties shall not create any third party rights in respect of the suit property during the pendency of this application.

7. The appellant shall not part with possession of the suit property in favour of any third party during the pendency of the second appeal.

(GAURI GODSE, J.)