



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.253 OF 2024

Durgabai Prakash Tivhane & others Vs. Smt. Rajkuwarbai Wd/o Santosh
Gandhi and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri M.G. Sarda, Advocate for appellants.
Shri V.B.Bhise, Advocate for respondent nos.1 and 2.

CORAM : M.W. CHANDWANI, J.

DATE : 03.03.2025.

1. Heard.
2. Appeal is **admitted** on the substantial questions of law
Nos.1 to 4 of the appeal, which are reproduced as under:

“1. Given that the written statement explicitly references the reply notice (Exhibit 35) and expresses the intention that it be read as part of the written statement, whether the contents of the reply notice should not be considered integral to the written statement for all legal purposes, including determining the scope of the dispute and the issues to be adjudicated?

2. Whether the appellants' assertion in reply notice (Exhibit 35), that the sale deeds in favour of Mr. Santosh Gandhi are nominal, cannot be considered as a part of their defence?

3. Does the defence that the sale deeds in favour of Mr. Santosh Gandhi were in fact a disguised loan transaction fall within an exception to Sections 91 and 92 of the Indian Evidence Act, particularly where

the challenge is based on the assertion that the documents do not reflect the real intention of the parties, thereby rendering the transaction invalid?

4. In a suit for possession, is a defendant precluded from raising an alternative plea of adverse possession even when contesting the plaintiff's claim of title? Furthermore, does the assertion of adverse possession inherently constitute an admission of the plaintiff's original title, thereby wakening the defendant's alternative claim?"

3. Call R&P.

4. After receipt of R&P, appellants to file private paper-book within four weeks.

5. Liberty is granted to the respondents to apply for early hearing.

CIVIL APPLICATION (CAS) NO.848 OF 2024

6. Heard.

7. Since appeal has been admitted on the substantial questions of law mentioned above, there shall be stay to the execution of impugned judgment and decree dated 06.05.2024 passed by the appellate Court in Regular Civil Appeal No.17/2019.

8. The application stands disposed of.

JUDGE

Wagh