SHAGUFTA QUTBUDDIN PATHAN

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.174 OF 2006
WITH
INTERIM APPLICATION NO.17520 OF 2022
WITH
CIVIL APPLICATION NO.1099 OF 2010
IN
SECOND APPEAL NO.174 OF 2006

Baburao Pandurang Kale
Age about 64 yrs, Occ. Agriculturist
Residing at Kalewadi, Taluka Haveli,
District Pune

…Appellant/
Applicant

Versus

Popat Mahadu Dabhade (Since Deceased)
Through his legal heirs,

1a. Balu Popat Dabhade
Age about 40 yrs, Occ. Agriculturist
Residing at Charholi Bk. (Kalewadi),
Taluka Haveli, District Pune.

1b. Kailas Popat Dabhade
Age about 35 yrs, Occ. Agriculturist
Residing at Charholi Bk. (Kalewadi),
Taluka Haveli, District Pune.

1c. Tanaji Popat Dabhade
Age about 32 yrs, Occ. Agriculturist
Residing at Charholi Bk. (Kalewadi),
Taluka Haveli, District Pune

1d. Suman Popat Dabhade (Since Deceased)
through legal heirs
Respondent Nos. 1a to 1c, 1e and 1f herein

1e. Radhabai Eknath Thakur
Age about 29 yrs. Occ. Household,

Residing at Charholi Bk. (Kalewadi),
Taluka Haveli, District Pune.

1f. Nanda Suresh Godse
Age about 37 yrs. Occ. Household,
Residing at Solu, Taluka Khed,
District Pune.

2. Kissan Govinda Dabhade (Since Deceased)
Through his legal heirs,

2a. Vilas Kisan Dabhade
Age about 48 yrs. Occ. Agriculturist,
Residing at Kalewadi,
Taluka Haveli, District Pune.

2b. Mangala Subhash Sendkar
Age adult, Occ. Household,
Residing at Manjari Bk., Popatwadi,
Taluka Haveli, District Pune.

3. Mr. Sham Harakchand Kolan
Age 61 years, Occupation Business
Residing at Alandi Devachi,
Taluka Khed, District Pune 412105

4. Mrs. Suvarna Rustum Somvanshi
Age 48 years, Occupation Housewife,
Residing at Gurukrupa Apartment,
NDA Road, Opposite Kakade Terrace,
Warje Malwadi, Taluka Haveli,
District Pune 411058

5. Mrs. Radha Sajjan Shelke
Age 28 years, Occupation Housewife,
Residing at Gosavi Galli, Lhamaswadi,
Taluka Kalamb, District Osmanabad, Pin 413507

6. Mr. Pradeep Baburao Jadhav
Age 24 years, Occupation Service,
Residing at Near Maruti mandir,
Devmurti, Jalna 431203

...Respondents

Mr. Rohit Joshi for the Appellant/Applicant

Mr. Sanskar Marathe for the Respondent No.1

Mr. Shailendra S. Kanetkar for the Respondent Nos. 2a and 2b

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : JULY 17, 2026

PRONOUNCED ON : AUGUST 17, 2026

JUDGMENT :

1. The Second Appeal is at the instance of the original Defendant No 1 being aggrieved by the common judgment dated 25th October 2005 passed by the First Appellate Court in Civil Appeal No.585 of 2002 filed by the Defendant No 1 and Civil Appeal No.591 of 2002 filed by the Defendant No.2.

2. By order dated 10th March 2006, the Second Appeal was admitted on the following substantial question of law :

> "(i) Whether Section 43 of the Transfer of Property Act, 1882 is applicable especially when the original Plaintiff had knowledge of the fact that the suit land was ancestral joint Hindu Family property of the original Defendant No. 2 Kisan and his two brothers, Ananda and Sopan ?
>
> (ii) Whether the Courts below ought to have considered the effect of the fact that the Plaintiff attempted to challenge the

judgment and decree dated 20th October 1995 passed in Regular Civil Suit No. 2209 of 1992 by preferring an Appeal, and the Appeal was not entertained, as a result of which the said decree may be binding on the original Plaintiff?

(iii) Whether the Courts below committed an error in not appreciating that oral evidence of one of the ostensible purchaser as against ostensible purchaser about the fact that Sale Deed in question was not intended to be acted upon was admissible in evidence under Section 91 and 92 of the Indian Evidence Act, 1872, and therefore, benefit of such evidence will enure to the original defendant No. 2?"

3. For the sake of clarity, the parties are referred to by their status before the Trial Court.

4. RCS No. 843 of 1992 was instituted against the present Appellant and Kisan Govind Dabhade, through his legal heirs, seeking a declaration that the Plaintiff is the *bona fide* purchaser for value of the suit land and is absolute owner in possession of the suit land and the Defendants be permanently restrained from interfering or disturbing the peaceful possession of the Plaintiff in the suit land. The suit property was described in the plaint as piece and parcel of southern half portion of land, i.e. 53 Ares out of the total area of 1 Hectare 6

Ares, including pot kharab of 3 Ares from Survey No. 144/1 of village Chowisawadi, i.e., previous Survey No. 943/1 of old village Charholi, Taluka Haveli, District Pune.

5. The Plaintiff's case was that the original Survey No. 943/1 and other lands situated at village Chowisawadi were the ancestral properties belonging to Hindu Undivided Family of the Defendant No 2 consisting of Defendant No. 2 i.e. Kisan Govind Dabhade and his brothers Sopan Govind Dabhade and Ananda Govind Dabhade, whose names were jointly recorded in respect of the said lands. The Defendant No. 2 made a fraudulent representation that pursuant to the oral partition prior to the year 1980 between him and his brothers, the Defendant No 2 is entitled to the suit land and is in actual possession and cultivation of the same. Vide registered sale deed dated 3rd April, 1987, the Plaintiff and the Defendant No 1 jointly purchased the suit land bearing Survey No 144/1 admeasuring 1 H 6 Are + 3 Ares for total consideration of Rs 25,000/, paid equally by the Plaintiff and Defendant No 1, who were then put in joint possession of the suit land.

6. After execution of the sale deed, the Plaintiff and the Defendant No 1 mutually partitioned the suit land and southern half portion admeasuring 53 Ares is allotted to present Plaintiff, who is in

actual cultivation and possession of the same. The execution of sale deed was confirmed by the Defendant No 2 in his written statement filed in Civil Suit No 930 of 1989 filed by Sopan Dhabade against the present Plaintiff and Defendants. It was pleaded that it was subsequently revealed that the entire Survey No 144/1 admeasuring 1 Hectare 59 Ares was joint family property of Defendant No 2, Sopan Dhabade and their deceased brother Ananda Dhabade and there was no partition by metes and bounds and each were having 1/3rd undivided share therein. Sopan has sold his 1/3rd share to third party in the year 1986 and the balance land was belonging to Defendant No 2 and Ananda Dhabade, who had since deceased and his legal heir was Baban Ananda Dhabade.

7. It was pleaded that the Defendant No 2 purchased the share of Baban Dhabade by registered sale deed of 16th October, 1989 and has subsequently acquired rights and interest to feed the estoppel and the Plaintiff has become absolute owner as per his sale deed dated 3rd April, 1987. The Defendants have colluded to deceive the Plaintiff and grab his suit land, by seeking to mutate their names in respect of entire portion of Survey No 144/1, and have attempted to create third party rights.

8. In the written statement of Defendant No. 1, it was pleaded that

the sale deed dated 3rd April, 1987 was a hollow sale deed in order to save the property of Defendant No 2 from his brother Sopan. There was no consideration paid for the sale transaction. The suit land was never in cultivation of the Plaintiff, but was being cultivated by the Defendant No 2. The Defendant Nos. 1 and 2 purchased 53 Ares out of Survey No. 943/1 and 23 Ares out of Survey No. 943/3 from Baban Ananda Dabhade on 16th October 1989, and the Plaintiff has no concern with the said lands.

9. The legal heirs of Defendant No. 2 by their written statement denied the claim of the Plaintiff.

10. The Trial Court framed the necessary issues including the issue as to whether the Plaintiff proves that the suit land was jointly purchased by the Plaintiff and Defendant No.1 from Defendant No.2 on his fraudulent and erroneous representation by way of registered Sale Deed dated 3rd April 1987 and whether the Defendants prove that the Sale Deed dated 3rd April 1987 is sham and bogus document. The Plaintiff examined himself and two witnesses, Santosh Chordiya and Kaluram Dabhade, and relied upon the Sale Deed, mutation entry, the statement of Defendants, etc. The Defendant No. 1 examined himself and two witnesses, Vasant Tapkir and Nivrutti Rangnath Kale, who are the attesting witnesses to the Sale Deed dated 3rd April 1987-Exhibit

96. The legal heirs of the Defendant No.2 failed to enter into the witness box.

11. The Trial Court answered the issue of execution of sale deed dated 3rd April, 1987 in favour of the Plaintiff. It observed that the cross-examination of Defendant No. 1 is that after the Sale Deed dated 3rd April 1987 was executed, the son of Ananda, i.e., Baban, sold out his portion to Defendant No. 1 and Defendant No. 2. It further noted the representation of Defendant No. 2 that in view of the oral partition prior to 1980 that he is in possession of 1 Hectare 6 Ares land is supported by the version of Defendant No 1 that he is cultivating 1 Hectare 6 Ares land on behalf of Defendant No. 2, to which there is no challenge by Kisan or his heirs. It further noted that in paragraph 14 of the written statement, Defendant No. 1 has admitted the fact regarding partition among Sopan, Ananda, and Kisan Dabhade, and since the co-parcener Sopan as well as Baban have already sold out their respective shares, it is proved that partition had already taken place and therefore, Defendant No. 1 is now estopped from saying that no partition had taken place. In view of the evidence on record, the Trial Court held that the Plaintiff along with Defendant No. 1 has purchased the suit property, i.e., 1 Hectare 6 Ares.

12. The Trial Court further tested the claim of the Defendant No. 1

that the Sale Deed of 3rd April 1987 was a hollow Sale Deed. In view of the evidence on record that Defendant No. 1 had affixed his signature on the document and that the contents of the document were narrated by him, the Trial Court opined that the Defendant No. 1 purchased the land along with the Plaintiff. It further noted the testimony of the attesting witnesses admitting that they have signed the Sale Deed as attesting witnesses and held that the execution of the document is proved by Defendant No. 1 himself. It noted that Defendant No. 2 has already admitted the execution of the Sale Deed and the possession of the Plaintiff over the suit land and that the Sale Deed was executed for legal necessity. It noted that the Defendant No. 1 has placed on record the certified copy of the plaint in Civil Suit No. 1818 of 1993 filed by Defendant No. 2a for cancellation of the Sale Deed. On perusal of the plaint in Suit No. 1818 of 1993, the Trial Court observed that there is no prayer in the suit that the Sale Deed dated 3rd April 1987 was sham and bogus and answered the issue in the negative as regards the Sale Deed of 3rd April 1987 being sham and bogus.

13. In view of Sections 91 and 92 of the Evidence Act, the Trial Court noted that no oral evidence contrary to the contents of the written document can be considered. It held that adverse inference can be drawn against the legal heirs of Defendant No. 2 who have not stepped

into the witness box and concluded that the Plaintiff is a *bona fide* purchaser. With these findings, the suit came to be decreed.

14. As against this, Civil Appeal No. 585 of 2002 was filed by Defendant No. 1 and Civil Appeal No. 591 of 2002 was filed by Defendant Nos. 2a and 2b, i.e., the legal heirs of Kisan Dabhade, which came to be disposed of by the common judgment dated 25th October 2005. The Appellate Court framed the necessary points for determination, including the issue as to whether the Sale Deed dated 3rd April 1987 was nominal, sham, and bogus Sale Deed and whether the subsequent purchase of the share of Ananda through his son, Baban, perfected the title of the Plaintiff on the basis of the Sale Deed dated 3rd April 1987 under Section 43 of the Transfer of Property Act.

15. Insofar as the findings on Section 43 of Transfer of Property Act are concerned, the Appellate Court noted that Defendant No. 2 had executed the Sale Deed in favour of the Plaintiff and Defendant No. 1 and had transferred the property for consideration purporting to be the absolute owner of the property, whereas the Defendant No. 2 had only 1/3rd share in the property and could transfer only his 1/3rd share of the property. It noted that by a registered Sale Deed dated 16th October 1989, Defendant No. 2 with Defendant No. 1 purchased the share of the third brother, Ananda, from his son, Baban, and the

Plaintiff's case is that by subsequent purchase of Ananda's share, the Defendant No. 2 became absolute owner of the entire property and relied upon Section 43 of the Transfer of Property Act to hold that the Plaintiff and Defendant No. 1 have perfected their title on the basis of the Sale Deed in their favour executed by Defendant No. 2.

16. It noted the contrary argument by the Defendant No. 1 that for attracting the provisions of Section 43, there has to be a fraudulent or erroneous misrepresentation and by exercising that authority, the property is required to be transferred. It was argued that when the transferee has knowledge that the transferor has no perfect title, Section 43 would not protect the right of such person and, therefore, the provisions of Section 43 would not be applicable and of no help to the Plaintiff. The Appellate Court noted the provisions of Section 43 of the Transfer of Property Act and held that though initially the Defendant No. 2 did not have the right to sell the entire property, by virtue of subsequent acquisition of title, Defendant No. 2 acquired absolute ownership over the entire property and there is an erroneous misrepresentation by Defendant No. 2 that under the oral partition, he became the owner. The Appellate Court opined that the requirements of Section 43 of the Transfer of Property Act are fulfilled and the subsequent purchase of the share of Ananda from his son Baban

perfected the title of the Plaintiff and Defendant No. 1 on the basis of the Sale Deed dated 3rd April 1987 and dismissed the Appeals, upholding the judgment and decree of the Trial Court.

17. Mr. Joshi, learned counsel appearing for the Appellant, would submit that before the Appellate Court an erroneous objection was taken by the Defendant No 1 to the applicability of Section 43 of the Transfer of Property Act, whereas Section 43 of the Transfer of Property Act would apply in the present case. He submits that the Appellate Court rightly held that Section 43 of the Transfer of Property Act applies, however did not apply it in the correct perspective by ignoring the fact that the subsequent Sale Deed dated 16th October 1989 was executed jointly in favour of the Defendant No 1 and 2 in respect of one-third share of Ananda. He submits that Defendant No 2 perfected his title only in respect of about 79 Are i.e. his 53 Are and half of the balance by reason of sale transaction of 16th October, 1989 i.e. about 26 Are. He submits that by reason of joint purchase by Defendant No 1 and 2, the Defendant No 1 would be entitled to 53 Are plus 26 Are being ½ share of 53 Are purchased from Baban increasing the Defendant No 1's holding.

18. He would point out paragraph 5 of the plaint, that it is an admitted position that the Plaintiff and Defendant No. 1 jointly

purchased the suit land measuring 1 Hectare 6 Ares. He submits that the Defendant No. 2 had only 1/3rd share and it is only upon the share of Ananda being purchased jointly by the Defendant No.1 and Defendant No. 2 from Baban that, as far as Defendant No 2's share is concerned, the title was perfected, whereas in respect of the Defendant No. 1's share under the Sale Deed dated 16th October 1989, the Defendant No. 1 became entitled to ownership right and, therefore, the Appellate Court could not decree the suit in respect of the Sale Deed dated 3rd April 1987.

19. *Per contra*, Mr. Marathe would submit that 53 Ares of Survey No. 144/1 was sold to the Plaintiff under the Sale Deed dated 3rd April 1987, and possession was given. He submits that there is no specific pleading in the written statement that the 53 Ares was not sold to the Plaintiff and possession was not given as the original owner's legal heirs have failed to contest the proceedings. He would further point out that the issues framed by the Trial Court were restricted to the issues which arose in the plaint as to whether the Plaintiff and Defendant No. 1 jointly purchased the suit land from Defendant No. 2 on his fraudulent and erroneous representation by way of registered Sale Deed dated 3rd April 1987. He submits that before the Trial Court, the case of the Defendants, was that the Sale Deed dated 3rd April

1987 is sham and bogus, which they failed to prove.

20. He submits that the pleaded case of Defendant No. 1 is completely different from the arguments being canvassed before this Court. He submits that there was no suit filed by the Defendants to claim ownership in respect of land in excess of 53 Ares by virtue of purchase under the subsequent sale deed executed on 16th October 1989. He submits that the ingredients of Section 43 of Transfer of Property Act stood satisfied and there are concurrent findings in favour of the Plaintiff.

21. He would point out that the Plaintiff had produced the written statement filed by Defendant No. 1 in Civil Suit No. 930 of 1987, wherein Defendant No. 1 had admitted the execution of the Sale Deed of 1987, and there was no whisper about the fact regarding this sham and bogus Sale Deed. He would further point out that the findings of the Trial Court in favour of the Plaintiff as regards execution of sale deed of 1987 and possession. He submits that these are findings of fact which cannot be interfered in the Second Appeal, drawing support from the decision of the Hon'ble Apex Court in the case of ***Vidhyadhar v. Manikrao and Another***[1]***.***

22. Mr. Kanetkar, learned counsel appearing for Defendant Nos. 2a

1 AIR 1999 SC 1441.

and 2b, submits that the Plaintiff does not challenge the Sale Deed dated 16th October 1989, and the effect of that sale deed was not considered by the Appellate Court. He submits that by virtue of the sale deed of 1989, the Defendant No. 1 was entitled to ½ share of 1/3rd share of Baban which was purchased by Defendant No. 1 jointly with Defendant No. 2.

23. In rejoinder, Mr. Marathe would submit that the Defendant No. 1 seeks to take benefit of Section 43 of the Transfer of Property Act to the extent to which the Defendant No. 2 had perfected the title and draws attention of this Court to the findings of the Appellate Court that by virtue of purchase of 1/3rd share, the Defendant No. 2 became absolute owner of the entire property and has perfected the title.

24. I have considered the submissions and perused the judgment of the Trial Court and the Appellate Court.

25. The first substantial question of law framed by the order of 10th March, 2006, was as regards the applicability of Section 43 of Transfer of Property Act, 1882 in view of the knowledge of original Plaintiff that the suit land was ancestral joint Hindu family property of Defendant No. 2-Kisan and his brothers Ananda and Sopan. The learned Counsel for the parties have addressed the Court only on the first substantial question of law.

26. The case of the Plaintiff was of ownership of southern half portion of Survey No. 144/1 admeasuring 53 Are by virtue of joint purchase from Defendant No 2 by sale deed of 3rd April, 1987 and the subsequent purchase in the year 1989 by the Defendant No 2 of Ananda's share, which perfected the title of Defendant No 2. The case of the Plaintiff was therefore, based on Section 43 of Transfer of Property Act which reads as under:

> "43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—
>
> Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.
>
> Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.
>
> Ilustration
>
> A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him."

27. The statutory provision provides that where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and does so, such transfer shall operate on any interest which transferor may acquire in such property at any time during which the contract of transfer subsist.

28. Interestingly, the defense of Defendant No. 1, present Appellant

before the Trial Court was that the sale deed of 3rd April, 1987 was hollow sale deed and was not meant to be acted upon. The Defendant No 1 denied the transfer of rights in the suit land by reason of the sale deed of 3rd April, 1987 and claimed to have purchased 53 Are land jointly with Defendant No 2 from Baban Ananda Dhabade under the sale deed of 16th October, 1989 and also claimed to be in cultivation of the entire suit land. The Defendants claimed ownership over the entire Survey No 144/1 by reason of Defendant No 2's share of 53 Are and the subsequent joint purchase of the year 1989. There was no counterclaim filed by Defendant No. 1, seeking declaration of ownership rights in the suit land.

29. The Trial Court and the Appellate Court on appreciation of evidence came to a specific finding of the sale of suit land being proved under the sale deed dated 3rd April, 1987 by the Defendant No 2 in favour of the Plaintiff and Defendant No 1. It held that the fact of partition is proved and and admitted by Defendant No 1 himself in the written statement. There are no submissions canvassed by Mr. Joshi to demonstrate perversity in the findings of fact by the Courts. The Plaintiff has therefore proved that by virtue of the sale deed dated 3rd April, 1987, there was sale of Survey No 144/1 admeasuring 1 H 6 Ares in favour of Plaintiff and Defendant No 1 jointly.

30. The Appellate Court framed the relevant point as to whether the subsequent purchase of share of Ananda perfected the Plaintiff's title by sale deed of 1987 under Section 43 of Transfer of Property Act. The Appellate Court accepted the Plaintiff's arguments of applicability of Section 43 of Transfer of Property Act as the Defendant No 2 by the subsequent purchase perfected his title. The rival argument of Defendants disputed the applicability of Section 43 of Transfer of Property Act to claim that there was no erroneous representation and the Plaintiff had knowledge that Defendant No 2 had no perfect title.

31. The question of law as framed in the Appeal Memo *qua* Section 43 of Transfer of Property Act reads as under:

> " 8. Whether both the Learned Court below erred in holding that all the requirements of Section 43 of Transfer of Property Act are fulfilled by the Plaintiff notwithstanding the fact that Plaintiff has knowledge that the suit property is ancestral Joint Hindu Family property of Defendant No 2, Kisan Govinda Dabhade and his brothers, Sopan Govinda Dabhade and Ananda Govinda Dabhade."

32. The first substantial question of law appears to have been framed by this Court in view of the submissions at the time of admission disputing the applicability of Section 43 of Transfer of Property Act, when the Plaintiff had knowledge of the fact that the suit land was ancestral joint property of original Defendant No. 2 and

his two brothers. It is therefore evident, that at the time of admission of the Second Appeal, the present Appellant had argued in consonance with his pleaded case before the Trial Court, which led to framing of the substantial question of law. However, during arguments, Mr. Joshi has canvassed submission in support of the applicability of Section 43 of the Transfer of Property Act, claiming that by virtue of the subsequent sale deed of 16th October, 1989, the Defendant No 1 and 2 jointly acquired Ananda's share, and by virtue of the sale deed of 1987 and of 1989, the Defendant No 1's share in Survey No. 144/1 increased. This submission is not part of the pleadings and was not the Defendant No 1's case before the Trial Court or the First Appellate Court. In the pleadings, the Defendant No. 1 had set up a completely different case of the sale deed of 3rd April, 1987 being nominal sale deed and no right being acquired either by Plaintiffs or Defendant No. 1. There was no counterclaim filed by the Defendant No. 1, claiming enhanced share in Survey No. 144/1 based on the subsequent sale deed of 16th October,1989.

33. The submissions of Mr. Joshi are contrary to the pleadings, the evidence, and the submissions canvassed before the Trial Court and the Appellate Court, and even at the time of admission of Second Appeal. Even accepting that this Court is empowered to hear the appeal on any other substantial question of law not formulated by it, if it is satisfied

that the case involved such question, the question of law should arise from the pleadings and evidence on record. Accepting the arguments of Mr. Joshi would amount to considering a completely new case about the extent of right of Defendant No 1 in Survey No 144/1, when there is no counter claim filed by the Defendant No 1 seeking declaration about the extent of his right and contrary case being set up before the Trial Court. A completely new case cannot be put forth as substantial question of law at the stage of Second Appeal.

34. In such peculiar facts, if the question of law is considered, it cannot be now doubted, in view of Mr. Joshi's submissions, that Section 43 of the Transfer of Property Act was in fact applicable, and by virtue of subsequent transaction of 16th October, 1989, Defendant No 2 had perfected his title in respect of Survey No. 144/1. As there was no pleading and no submissions canvassed as to the extent of the land to which Defendant No 2had perfected his title, no substantial question of law arose or was framed for consideration in that regard. It was open for the Defendant No. 1 to file counterclaim or independent proceedings claiming an enhanced share by virtue of the sale deed of 16th October, 1989, which has not been done.

35. The suit filed by the Plaintiff was for declaration that he was the *bona fide* purchaser for value of the suit land and absolute owner in possession of the suit land, i.e. southern half portion of Survey No.

144/1. The sale deed of 3rd April, 1987 has been proved by the Plaintiff, and consequently, the sale transaction. In the absence of any pleading, there was no issue framed as regards the extent of land, in which the Plaintiff could claim his rights under the sale deed of 3rd April, 1987. For the first time, without any pleading, at the stage of the Second Appeal, an issue which is fact laden cannot be raised.

36. In view of the changed stand taken by the Defendant No. 1 at the Second Appeal stage, there are no arguments canvassed as regards the other substantial question of law, which were also framed by reason of the Defendant No 1's earlier stand of non-applicability of Section 43 of the Transfer of Property Act. As the Defendant No 1 has now attempted to argue a case which was not his pleaded case before the Trial Court and was not an issue for consideration, and has accepted the applicability of Section 43 of Transfer of Property Act, no substantial question of law arises. Resultantly, Second Appeal fails and stands dismissed.

37. Applications do not survive for consideration and stand disposed of.

[SHARMILA U. DESHMUKH, J.]