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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 9019 OF 2025
IN
FIRST APPEAL NO. 206 OF 2012**

M/s. Yash Shree Realtors

...Applicant

In the matter of

M. Satish Babu & Others

...Appellants
(Orig. Defendant Nos. 3
to 9, 11 & 12)

VERSUS

Kannaiyalal Purshottamdas Shah & Others

...Respondents
(Orig. Defendant Nos. 1,
2, 10 & 13)

**WITH
INTERIM APPLICATION NO. 9017 OF 2025
IN
FIRST APPEAL NO. 251 OF 2012**

M/s. Yash Shree Realtors

...Applicant

In the matter of

Sukhram Triloki Varma & Others

...Appellants
(Orig. Defendant Nos.
9 to 25-A)

VERSUS

Kannaiyalal Purshottamdas Shah & Others

...Respondents
(Orig. Defendant Nos.
1 to 8)

**WITH
FIRST APPEAL NO. 2477 OF 2011**

Sitabai Naik (Since Deceased) & Others

...Appellants

VERSUS

Kannaiyalal Purshottamdas Shah & Others

...Respondents

Mr. Satyavan N. Vaishnav a/w. Ms. Nupur J. Mukherjee i/b. M/s. N.N. Vaishnawa & Co. for the Applicants/ Org. Respondent Nos. 1 to 11 in FA/2477/2011, FA/206/2012 & FA/251/2012.

Mr. Rohan Surve for Appellants in FA/206/2012.

Mr. Rajesh Kanojia i/b Mr. Akash Mangalgi for Respondent Nos. 16 & 17 in FA/206/2012.

Mr. Ishan Agrawal a/w. Mr. Pradyumna Agrawal & Mr. Anshu Agrawal, Mr. Ankit Rathod for Appellants in FA/2477/2011.

CORAM : JITENDRA JAIN, J.

DATED : 18th MARCH 2026

P C. :

1. This application is filed by the proposed applicant M/s. Yash Shree Realtors (YSR) for deleting respondent nos. 1 to 11 and to join the applicant as a party respondent in the First Appeal No. 206 of 2012.

2. On 5th March, 2026, this court in Interim Application No. 9018 of 2025 in First Appeal No. 2477 of 2011 has passed an order permitting the applicant YSR to be joined as a party respondent, but retaining respondent nos. 1 to 11. Both these appeals relate to the same suit property. However, the present Interim Application No. 9019 of 2025 was adjourned to accommodate respondent nos. 16 and 17 and the appellants since their counsel was not available on that day.

3. Mr. Vaishnav, learned counsel for the applicant and respondent nos. 1 to 11 has relied upon the order passed in Interim Application No. 9018 of 2025 on 5th March, 2026 and submitted that the application may be allowed since the issue is now covered by the said order.

4. The learned counsel for respondent nos. 16 and 17 opposes and

submits that the decree has been obtained by fraud since respondent no. 1 who had knowledge of death of various respondents and the transactions of release deeds prior to the suit being decreed, did not take any steps to inform the trial court. He submits that if the legal heirs of the deceased were not brought on record, then the suit abates and therefore, a fraud is played on the trial court in obtaining the decree. The learned counsel brought to my attention various transactions prior to the suit being decreed in this regard.

5. It is his submission that since these were the transactions prior to the decree of suit and same having not been disclosed, there is a fraud and relying upon the decision of the Hon'ble Supreme Court in the case of ***S.P. Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs & Ors.***¹ submitted that fraud vitiates everything and therefore the decree itself is null.

6. The learned counsel for respondent nos. 16 and 17 further submitted that the applicant-YSR is not affected and he can very well take fresh proceedings with respect to the subject suit independently. He fairly admitted that no reply has been filed to the present application by respondent nos. 16 and 17 nor any application has been made for setting aside the decree on the ground of fraud even after having acquired the knowledge of death of various people and the transaction of release deeds.

7. The learned counsel for respondent nos. 16 and 17 relied upon Order 1, Rule 10 of Code of Civil Procedure, 1908 (CPC) and stated that no case is made out for *bonafide* mistake and therefore, the present application is required to be rejected.

¹ (1994) 1 SCC 1

8. The learned counsel for the appellants relied upon the reply filed to this application and prayed for dismissal of the present application. In the said application, the ground for delay and laches have been canvassed. Furthermore, it is stated that no reason is provided to bring on record various transactions executed between the year 2009 and 2012, though the proceedings were carried on by respondent no. 1. The learned counsel further submitted that the applicant has no locus in the present matter. The registered release deeds executed, are also disputed in the affidavit in reply.

9. I have heard learned counsel for respondent nos. 16 and 17 and the learned counsel for the appellants.

10. At the outset, it is not disputed by respondent nos. 16 and 17 that till today no application has been made for setting aside the decree or dismissal of the appeal on the ground of fraud, though the facts which he has narrated came to his knowledge.

11. The argument that Order 1, Rule 10 of CPC speaks of *bonafide* mistake and that, there is no such *bonafide* mistake considered by this court in its order dated 5th March 2026, wherein it is stated while dealing with the condonation that there was a *bonafide* belief, since the respondents and the applicant were all family members. Same has been discussed in paragraph 27 of the order. Paragraph 27 is again based on the same being averred by the applicant in the civil application to show the *bonafide* belief in paragraphs 13 to 17. Therefore, the contention of *bonafide* mistake is rejected.

12. The contention that the transactions prior to the decree were not brought to the notice of the trial court and therefore, there is a fraud cannot be considered at this stage. The respondents and the appellants

have not made any application for setting aside the decree or the dismissal of the appeal on this ground till today. In any case, this court is considering the application made by YSR whose transaction is post the suit being decreed and even this issue has been considered by this court in its order dated 5th March, 2026. The issue before me is whether to make applicant-YSR a party respondent or not. There is no application before me for the prayer that the decree has been obtained by fraud and/or the appeal should be dismissed on that ground.

13. This court in its order dated 5th March, 2026 has considered the issue of fraud in paragraph 22. Merely making allegation of fraud is not enough, but there has to be a specific averment to that effect. In this case, respondent nos. 16 and 17 have not filed any reply. Therefore, this allegation cannot be considered and in any case, the order dated 5th March, 2026 has considered this issue.

14. The learned counsel for respondent nos. 16 and 17 and the appellants have not made any attempt to distinguish the order passed on 5th March, 2026, whereby a similar application came to be allowed.

15. The contention of the appellants by relying upon the affidavit in reply has been exhaustively considered by this court in its order dated 5th March, 2026 and, therefore, for the reasons set out therein, the contention raised by the appellants is not accepted.

16. For all the above reasons, Interim Application No. 9019 of 2025 is allowed by permitting the applicant-YSR to be joined as party respondent, but by retaining original respondent nos. 1 to 11. Amendment to be carried out within 4 weeks in all the copies of all the parties, re-verification is dispensed with.

17. The parties agree that the order passed in Interim Application No. 9019 of 2025 would equally apply to Interim Application No. 9017 of 2025.

18. Therefore, for the reasons set out in my order disposing Interim Application No. 9019 of 2025, the Interim Application No. 9017 of 2025 is also disposed of with a direction that the amendments be carried out within 4 weeks by permitting impleadment of applicant-YSR as party respondent, but by retaining original respondent nos. 1 to 11. Interim Application No.9017 of 2025 is allowed in above terms.

19. This court today is not examining the issue of fraud since there is no application before me. All the contentions of all the parties in this regard are kept open.

20. Both Interim Applications are allowed, subject to payment of cost of Rs. 25,000 /-. The cheque should be issued within 4 weeks in the name of the advocate on record for the appellants.

21. List this matter on **22nd April, 2026** for further consideration.

[**JITENDRA JAIN, J.**]