



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 536 OF 2025
IN
INTERIM APPLICATION NO. 2531 OF 2026

Subhash Mahadev Pokale & anr. ..Appellants

Versus

M/s. Yashwant Constructions & ors. ...Respondents

Mr. Ashutosh Kulkarni a/w Mr. Yash Naik i/b Vaibhav
Gaikwad, for the Appellants.

CORAM : N. J. JAMADAR, J.

DATE : 2nd APRIL 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. This appeal is directed against a judgment and decree dated 30th May, 2025 passed by the learned District Judge, Pune in Regular Civil Appeal No. 28/2023 whereby the appeal preferred by the appellants/original Defendant Nos. 2 and 3 against the decree passed in Special Civil Suit No. 1520/2014 dated 13th March, 2018, came to be dismissed.
3. The Respondent Nos. 2 and 3 – original plaintiffs instituted Special Civil Suit No. 1520/2014 seeking a declaration that, the development agreement dated 17th March, 2005 executed by the plaintiffs in favour of the Defendant No. 1 in respect of the land bearing Survey No. 11/3 admeasuring 8R

situated at village Dhayari, Pune (the suit property) stood cancelled and terminated and the plaintiffs were entitled to recover possession of the suit property, on account of the breach of the obligations thereunder by the Defendant No. 1 and the fraudulent transfer of the interest in the suit property by the Defendant No. 1 in favour of Defendant Nos. 2 and 3 – appellants herein.

4. The Defendant Nos. 2 and 3 contested the plaintiffs claim and asserted that, the development agreement dated 24th October, 2007 was executed by Defendant No. 1 in favour of Defendant Nos. 2 and 3 with the consent of the plaintiffs. However, the defendant did not adduce any evidence to bolster up their defence.

5. By a judgment and decree dated 13th March, 2018, the learned Civil Judge decreed the suit and declared that, the development agreement and irrevocable power of attorney executed by plaintiffs in favour of the Defendant No. 1 stood cancelled, in view of the breach of the obligations by the Defendant No. 1 and, consequently, the subsequent development agreement dated 24th October, 2007, executed by Defendant No. 1 in favour of the Defendant Nos. 2 ad 3 was null and void *ab initio* and did not bind the rights of the plaintiffs in

the suit property. The Defendant Nos. 1 to 3 were also directed to deliver possession of the suit property to the plaintiffs, and restrained from creating further third party rights in the suit property.

6. Being aggrieved, the Defendant Nos. 2 and 3 preferred appeal before the District Court. By the impugned judgment and decree, the learned District Judge dismissed the appeal finding no fault with the decree impugned before him.

7. Mr. Ashotush Kulkarni, the learned Counsel for the appellants would submit that, there was a serious discrepancy regarding the identification of the property in respect of which, the plaintiffs had allegedly executed a development agreement in favour of the Defendant No. 1. The proceedings were initiated before the Revenue Authorities. Thus, the appellants/Defendant Nos. 2 and 3 had filed an application for permission to adduce additional evidence under the provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908. By the impugned judgment, the said application was also unjustifiably rejected by the learned District Judge. Thus, a substantial question of law as to whether the impugned decree could have been passed when the identity of the suit property itself was shrouded in mystery arises for consideration, submitted Mr. Kulkarni.

8. I am unable to persuade myself to agree with the aforesaid submission. The nature of jural relationship between the parties assumes material significance. What was executed by the plaintiffs in favour of the Defendant No. 1 was only a development agreement. The title in the suit property did not pass to the Defendant No. 1.

9. Apart from the issue of breach of obligations on the part of the Defendant No 1 as the payments were not made within the stipulated period, the very competence of the Defendant No. 1 to execute a further development agreement in favour of the Defendant Nos. 2 and 3 was itself in question. Though the Defendant Nos. 2 and 3 claimed that, the plaintiffs had given consent for the execution of the development agreement by the Defendant No. 1 in favour of the Defendant Nos. 2 and 3, yet, no evidence was led by the defendants to substantiate the said defence. In fact, the plaintiffs claim had gone virtually unimpeached.

10. In the aforesaid backdrop, the submissions premised on the purported discrepancy in the identity of the suit property do not advance the cause of the Defendants No. 2 and 3.

11. Suffice to note, the Defendant Nos. 1 to 3 had no antecedent right, title and interest in the suit property and the

Defendant No. 1 came in possession of the suit property under the development agreement only. Therefore, no mileage can be drawn from the purported discrepancy in the identification of the suit property. Thus, no question of law, much less a substantial question of law, arises for consideration.

12. The Second Appeal thus stands dismissed.

13. In view of the dismissal of the Second Appeal, the IA/2531/2026 also stands disposed.

[N. J. JAMADAR, J.]