IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 193 OF 2026
WITH
INTERIM APPLICATION NO. 3020 OF 2026

Ramesh Sitaram Soni and Anr ..Appellants
Versus
Shantidevi Shyamlal Yadav & Anr …Respondents

Mr. Rajiv Patil, Senior Advocate, with Prashant D Patil, for the Appellants.
Mr. Mukesh Pabari, for the Respondents.

CORAM: N. J. JAMADAR, J.
DATE : 27th APRIL 2026

ORDER:

1. This Second Appeal is directed against a judgment and decree dated 20th March 2026 passed by the learned District Judge, Belapur, in Regular Civil Appeal No. 71 of 2023, whereby the Appeal preferred by the Appellants-Original Defendant Nos. 1 and 2 against a judgment and decree dated 21st January 2023 passed by the learned Civil Judge in SCS No. 521 of 2014, came to be dismissed by affirming the said judgment and decree of cancellation of instruments and delivery of possession in favour of Respondent No.1-Plaintiff.

2. The Plaintiff is the owner of Flat No. A-3 in M/s Radhika CHSL (D3) situated at Plot No. 7, Sector-14, Vashi, Navi Mumbai ("the suit flat"). The Plaintiff instituted a suit seeking a declaration that the purported Deed of Transfer cum Sale dated 19th October 2011 and the Power of Attorney dated 19th October 2011 allegedly executed by the Plaintiff in favour of Defendant No.2 and the consequent registered instrument dated 18th July 2014 are void and illegal and have been obtained by playing fraud and/or by misrepresentation. Those instruments be ordered to be delivered up and cancelled and Defendant Nos. 1 and 2 be directed to deliver vacant possession of the suit flat and also pay compensation for unlawful occupation of the suit flat from 1st October 2023.

3. The Plaintiff claimed that she was fraudulently induced to execute purported Deed of Transfer cum Sale dated 19th October 2011 by making a misrepresentation that the said instrument was that of Leave and Licence and Defendant No.1 had paid a sum of Rs. 5,00,000/- (Rs. Five Lakhs) towards the advance licence fees for the occupation of the suit flat for a term of two years. The Plaintiff asserts that her son, Rajesh had made such representations to the Plaintiff. Eventually it transpired that on the basis of the forged and fabricated documents, Defendant Nos. 1 and 2 got the said Deed of Transfer cum Sale registered and after forging the documents purportedly emanating from Defendant No.3-society also, got the suit flat transferred in the name of Defendant Nos. 2 in the record of CIDCO.

4. After appraisal of evidence, the learned Civil Judge was persuaded to return the findings that purported Deed of Transfer cum Sale and Power of Attorney (Exhibits "37" and "38") were forged and fabricated documents, Plaintiff was fraudulently induced to execute those documents in the belief that those documents were in respect of a transaction of leave and licence and, thus, those documents were voidable and not binding upon the Plaintiff.

5. The learned Civil Judge thus made such declaration and directed that the purported Deed of Transfer cum Sale registered on 18th July 2014 with the Sub-Registrar of Thane be cancelled and entry be made in the record maintained by the Registrar. Defendant Nos. 1 and 2 were directed to pay a sum of Rs.10,000/- per month from the date of the suit till the delivery of possession towards charges for unlawful occupation/*mesne profit.*

6. Being aggrieved the Defendants preferred Appeal before the District Court. By the impugned judgment and decree, the learned District Judge, after an elaborate analysis of the evidence, dismissed the Appeal.

7. Being further aggrieved and dissatisfied, Defendant Nos. 1 and 2 have preferred this Appeal

8. Heard Mr. Rajiv Patil, the learned Senior Advocate for the Appellants and Mr. Mukesh Pabari, the leaned Counsel for the Respondents.

9. Mr. Rajiv Pail, the learned Senior Advocate for the Appellants would submit that both the Trial Court and first Appellate Court committed manifest error in law in not appreciating the evidence of the witnesses for the Defendant who categorically stated that they had witnessed the transaction and the Plaintiff had sold the suit flat and accepted the consideration thereunder.

10. The Courts below, according to Mr. Patil, were swayed by the fact that the Secretary of Defendant Nos.3-society and the officials of the CIDCO deposed that the documents of transfer appeared to be forged. In the process, the Courts below lost sight of the fact that there was no denial of the execution of Deed of Transfer cum Sale and the Power of Attorney. A very heavy onus lay on the Plaintiff to demonstrate that she was fraudulently induced to execute the instrument by her own son, Rajesh. In the absence of any cogent evidence on the said point, the Courts below committed errors in returning the findings that the instruments were forged on the basis of surmises and conjectures, submitted Mr. Patil.

11. Mr. Pabare, the learned Counsel for the Respondents, supported the impugned decree.

12. Having heard the learned Counsel for the parties and perused the evidence and material on record, this Court finds that Defendant Nos. 1 and 2 were required to surmount insuperable impediments.

13. Firstly, the very execution of Deed of Transfer cum Sale and Power of Attorney by the Plaintiff could not be established. The Notary before whom the documents were purportedly executed, categorically stated that the Plaintiff had not appeared before him and executed the document and thus those documents were not entered in his notarial register.

14. Secondly, the purported Deed of Transfer cum Sale dated 19th October 2011 operated as an instrument of transfer *eo instante.* It was not in the nature of an Agreement for Sale. The purported Power of Attorney dated 19th October 2011 in favour of Defendant No.2-the purchaser, indeed authorised the purchaser to register the said Deed. On the strength of the said Power of Attorney, Defendant No.2-purchaser got the said Deed of Transfer cum Sale registered on 18th July 2014. Since the purported Deed of Transfer cum Sale was executed on 19th October 2011 it could not have ben registered beyond the period of eight months of its execution in view of the mandate contained in Sections 23 and 25 of the Registration Act, 1908.

15. Thirdly, the Courts below, upon appreciation of evidence have recorded that the Defendants failed to demonstrate that the purported consideration of Rs. 22,00,000/- was paid to the Plaintiff, as claimed. It was *inter alia* noted that there were monetary transactions between Defendant No.1 and Rajesh, the son of the Plaintiff. Fourthly, the evidence of Secretary of Defendant No.3-society and an official of CIDCO that the documents on the strength of which the suit flat was got transferred in the name of Defendant No2 in the record of CIDCO were forged, could not be impeached. The falsity of the documents was evident from the intrinsic evidence of the documents.

16. In the aforesaid backdrop, the Courts below were well within their rights in arriving at the conclusion that the instruments were illegal and did not bind the Plaintiff. These concurrent findings of facts, based on appreciation of evidence, do not warrant interference in a Second Appeal.

17. Thus, no question of law, much less a substantial question of law, arises for consideration.

18. Hence, the Second Appeal stands dismissed.

19. In view of the dismissal of Second Appeal, Interim Application stands disposed.

[N. J. JAMADAR, J.]