



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

Second Appeal No.73/2024

Akhil Khan Dilawar Khan
Aged about 50 years, Occ : Labour,
R/o Muzzafarpura, Amravati,
Tq. & District Amravati.

APPELLANT
(Ori.Plaintiff on
R.A. and Defendant
in counter claim)

Versus

Smt. Malinibai Gopalrao Mahalle,
(Since Deceased) Through LR's
Shri Prabhakar Baburao Wankhade
Aged about 62 years, Occ : Business,
R/o Navsari, Tq. & District Amravati.

RESPONDENT
(Ori.Defendant on
R.A. and Plaintiff
in counter claim.)

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Mr. P.R.Agrawal, Advocate for appellant.

Mr. V.A.Kothale, Advocate for respondent.

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CORAM : ROHIT W.JOSHI, J.
DATE : 07.01.2026.

ORAL JUDGMENT:

1. Notice in the present second appeal was issued vide order dated 28.07.2025, on the following substantial questions of law:-

(i) Whether respondent-Prabhakar Bapurao Wankhede has proved that he is legal representative of Malinibai Gopalrao Mahale and entitle for the decree of possession being legal heirs of late Malinibai especially when in cross-examination he has categorically admits that Malinibai is having three sons and one daughter?

ii) Whether the Courts below are right in observing the sale-deed dated 21.07.2011 is fraudulent document in absence of any evidence by Malinibai who claims to have the person cheated?

iii) What is the effect of pendency of criminal prosecution against the appellant on the allegation that sale-deed dated 21.07.2011 was got executed by impersonating Malinibai and whether the Courts below committed error in deciding the suit before conclusion of criminal prosecution pending against the appellant?"

2. The appellant is the original plaintiff, who had filed a suit for specific performance of contract against late Malinibai Gopalrao Mahalle (original defendant). The parties will be referred as plaintiff and defendant hereinafter.

3. It is the case of the plaintiff that pending the Civil Suit, he had entered into an agreement of sale with respect to the suit property with the defendant on 23.05.2002 *inter alia* agreeing to purchase the same for a consideration of Rs.1,50,000/-. The suit property is a piece of land admeasuring 3000 sq.ft. bearing Plot no.48, Survey no.76 of mouza Navasari, Tahsil and District Amravati.

4. In this suit, the defendant entered appearance and filed counter claim for possession along with her written statement. It is the case of the plaintiff that pending the Civil Suit, sale deed with respect to the suit property was executed in his favour by the defendant on 04.07.2011, which was registered on 21.07.2011. The plaintiff did not contest the suit on merits in view of the said sale deed dated 04.07.2011. The suit was ultimately dismissed for want of prosecution on 07.01.2014. The defendant amended the counter claim in order to challenge the sale deed dated 21.07.2011 stated to be executed by her in favour of the plaintiff.

5. The learned Trial Court has decreed the counter claim, vide judgment and decree dated 11.07.2018 declaring that sale deed dated 21.07.2011 declaring that the sale deed in question did not confer any title over the suit property on the plaintiff and accordingly decree for possession was also passed in favour of the defendant-Malinibai.

6. Aggrieved by the aforesaid decree, the plaintiff preferred first appeal being Regular Civil Appeal No.144/2018, which is also dismissed.

7. The present second appeal is filed assailing the aforesaid concurrent decrees. The defendant-Malinibai expired during pendency of the civil suit on 25.10.2016. The present respondent was brought on record as legal representative on the basis of a registered Will allegedly executed in his favour by the defendant-Malinibai.

8. Mr. P.R.Agrawal, learned Advocate for the appellant-original plaintiff, draws attention to the judgment dated 16.09.2025 delivered by the Additional Chief Judicial Magistrate, Court no.3, Amravati, in Regular Criminal Case No.971/2011 and argues that the plaintiff was prosecuted for creating false sale deed with respect to the suit property and that after full-fledged trial, the plaintiff granted clean acquittal in the said criminal case. Mr. Agrawal contends that since a Court of competent jurisdiction has held that the plaintiff is not guilty of preparing false sale deed, the findings recorded by the learned Court with respect to the sale deed must be revisited in the light of the evidence that has come on record in the criminal case and the judgment delivered by the learned

Chief Judicial Magistrate. He contends that the judgment granting acquittal is a subsequent development which should be taken into consideration.

9. The said contention is recorded only to be rejected. It is a well settled proposition of law that a judgment delivered in a criminal case does not operate as res judicata in a civil suit. The evidence recorded in criminal case also cannot be considered since the learned Trial Court has recorded evidence of parties and decided the suit on merits upon trial of the suit. Likewise the prosecution of the appellant was by the State. The defendant had merely made a complaint on the basis of which prosecution was initiated.

10. As regards substantial questions of law no.2 with respect to the evidence of Malinibai, it needs to be mentioned that the learned Trial Court has compared the photograph of Malinibai affixed on the sale deed in question with the photographs on the alleged sale deed, the power of attorney and the charge-sheet in the criminal case (Exh.52). The learned Trial Court has observed that the photograph of Malinibai on the Will deed was admitted by the plaintiff as real photograph of Malinibai during the cross-examination. On comparison of the photographs, it is found that the photograph of vendor in the sale deed dated 04.07.2011(registered on 21.07.2011) was not of the defendant-Malinibai.

11 In view of the aforesaid, the learned Trial Court has recorded a finding that the sale deed dated 04.07.2011 was obtained by impersonation of Malinibai-Vendor.

12. The learned First Appellate Court on re-appreciation of evidence has confirmed the findings recorded by the learned Trial Court. These findings of fact recorded by the learned Courts are impeccable and do not warrant any interference.

13. Merely because Malinibai has not recorded her deposition with aspect of cheating cannot be a ground for deciding the substantial question of law in favour of the appellant-plaintiff, since the photograph of the Vendor in the sale deed in question is undisputedly not of Malinibai. It is undisputed that Malinibai has not executed the sale deed in question as can be seen from the photograph of vendor on the sale deed and her photographs on other admitted documents.

14. As regards the first substantial question of law, it is not in dispute that defendant-Malinibai is survived by three sons and a daughter and that the application for impleadment of the respondent as legal representative was allowed without notice to her children. The respondent claims to be nephew (sister's son) of Malinibai. His name is brought on record on the basis of Will. In the fairness Mr. Kothale, the learned Advocate for the respondent does not dispute that the attesting witness was not examined by the learned Trial Court before impleading the name of the respondent as legal representative of deceased Malinibai (defendant). It is also not in dispute that the notices were also

not issued to the children of Malinibai before allowing application for impleadment of name of the respondent as legal representative of Malinibai.

15. In view of the findings recorded above, in the considered opinion of this Court although the appellant-plaintiff has failed to make out any case on merits, the issue pertaining to the status of the respondent as legal representative of deceased defendant-Malinibai warrants further inquiry. However, having regard to the fact that the present appellant-plaintiff claims right over the suit property and is occupying the same on the basis of fabricated sale deed, the appeal cannot be entertained at the behest of the present appellant.

16. In view of the above, the second appeal stands dismissed. Costs to follow the cause.

17. However, learned Executing Court is directed to issue notices to the children of original defendant-Malinibai in whose favour a decree of possession is passed in the counter claim. The respondent, who is prosecuting the execution proceedings as decree holder shall provide names and addresses of the children of deceased defendant-Malinibai to the Executing Court. The learned Executing Court shall issue notices to the children of Malinibai and shall proceed with the execution after deciding as to whether the respondent-decree holder can claim right over the suit property on the basis of Will alleged to be executed in his favour by defendant-Malinibai. In the event, the will is not proved,

the right to execute the decree shall be available with the children of Malinibai.

18. The appellant is permanently restrained from parting with possession of the suit property and also from altering the nature thereof as also from creating any third party interest in the suit property.

(ROHIT W. JOSHI, J.)

Mukund Ambulkar