



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

CIVIL APPLICATION (CAS) NO.68 OF 2026 IN
SECOND APPEAL ST. NO.21550 OF 2025

Shri Basantkumar @ Balbhadra S/o Jagannathsingh Yadav (Dead) through LRs. **Vs.**
Shri Udaysingh S/o Chirkut Patil (Dead) through LRs.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr H.I. Kothari, Advocate for applicants.

CORAM : ROHIT W. JOSHI, J.
DATE : 21/01/2026

1. Issue notice to the non-applicants, returnable on **06.02.2026**.
2. The applicants are directed to serve the non-applicants by speed post in addition to regular mode of service and file affidavit of service before the returnable date.
3. Mr. Kothari, learned Advocate for the appellants contends that on the basis of the decree passed by the learned First Appellate Court, the non-applicants are trying to carry out mutation of their names in the relevant record in order to create third party interest. He draws attention to paragraphs 12 and 13 of the judgment passed by the learned trial Court and contends that the title of the plaintiff's father cannot be disputed in view of the sale deed of the year 1932 at Exh.257.
4. He further contends that the defendant's sale deed dated 08.01.1986 does not confer any title on the defendant, inasmuch as the suit property was purchased

from one Chhotelal, who is merely brother of Bhaiyyalal, who was appointed as guardian of the plaintiff by order passed by the learned District Judge. Drawing attention to the judgment passed by the learned First Appellate Court, the learned Advocate contends that the point for determination with respect to the ownership of the plaintiff is answered against the appellants/plaintiffs only because the suit property was sold after filing of the suit to one Manojkumar Siriya. The learned Advocate contends that the mere transfer of property by the original plaintiff pending the suit will not foreclose his right to contest the suit on merits. He further draws attention to paragraph 20 in the judgment of the learned First Appellate Court and contends that the learned First Appellate Court has not recorded a finding that vendor of defendant, Chhotelal, was the owner of the suit property. It is merely recorded that the name of Chhotelal was recorded in record of Municipal Council and in view of this, it is held that the defendant is a bonafide purchaser who has purchased the property from his vendor in view of long standing entry in his favour in the relevant record.

5. In view of the above, following substantial question of law may arise for consideration:-

“i) Whether the right to prosecute the proceedings is lost merely because the plaintiff transfer the suit property during the pendency of the suit?”

ii) Whether Chottelal can be said to be ostensible owner of the suit property merely on the basis of mutation of his name in the records of Municipal Council ?

iii) Whether the appeal was liable to be dismissed for non-joinder of plaintiff No.1(g) as party respondent to the appeal ?”

6. In view of the above, till the returnable date *status quo* be maintained with respect to the suit property.

(ROHIT W. JOSHI, J.)

C.L. Dhakate