
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1085 OF 2010
WITH
INTERIM APPLICATION NO. 14722 OF 2023

Vasant Gangaram Pedamkar .. Appellant
Versus
Harishchandra Gangaram Pedamkar (Now deceased)
through LRs. Asmita Anil Dalvi Nee
Asmita Harishchan and Ors. .. Respondents

Mr A A Siddiquie a/w Mr Suraj D Chauhan i/b M/s A A Siddiquie and Associates, for the Appellant.

Mr Rajesh B Doshi a/w Ms Neha R Doshi, for Respondents No.1 and 2. for the Defendant / Respondent.

CORAM : FIRDOSH P. POONIWALLA, J.

RESERVED ON : DECEMBER 15, 2025

PRONOUNCED ON : JUNE 09, 2026

JUDGEMENT :

1. The present First Appeal is filed challenging the Judgement dated 23rd June 2010 passed by the Bombay City Civil Court at Dindoshi, Mumbai, in S.C. Suit No.6680 of 1999 whereby the said Suit was dismissed.

2. Interim Application No.14722 of 2023 is filed by the Appellant under the provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908 (CPC), seeking to produce additional evidence on record in the appeal. This Interim Application is directed to be heard along with the present First Appeal.

FACTS

3. The case of the Appellant (original Plaintiff) is as under:

a. The original Respondent No.1 is the elder brother of the Appellant and Respondent No.2 is the younger brother of the Appellant. The suit premises being Room No.516, Azad Nagar, Building No.32, Alfa Co-Operative Housing Society, Andheri (West), Mumbai, was originally allotted to original Respondent No.1 on monthly rental basis by MHADA in 1966.

b. Sometime around 1982, MHADA agreed to convert the tenancy rights of occupants into ownership rights. For that purpose, MHADA launched a hire purchase scheme and the individual buildings were allowed to form their own co-operative housing society and pay the purchase price. MHADA fixed the purchase price of the suit premises as Rs.7,000/-

c. The Appellant and Respondent No.1 were staying in the suit premises

with their respective families. It was agreed between the Appellant and original Respondent No.1 that the Appellant will pay the purchase price of the suit premises to MHADA and shall also help Respondent No.1 for the marriage of his daughter because at the relevant time, the original Respondent No.1 had resigned from his service. It was also agreed that, though the name of the original Respondent No.1 is recorded as the member of the society and the share certificate be obtained in the name of original Respondent No.1, for all purposes, the Appellant alone and exclusively would be entitled to all the right, title and interest in the suit premises.

d. With these mutual agreements, the name of the original Respondent No.1 was allowed to be incorporated as a member of the society. The Appellant continued to pay the monthly installments towards the price of the suit premises. The Appellant also maintained original Respondent No.1 and his family members out of his own income and the Appellant alone made all the expenses of the marriage of the daughter of original Respondent No.1.

e. The Appellant's father had acquired property at his native place. In 1984, Respondent No.1 left Mumbai under the pretext of looking after the affairs of the said property.

f. In April 1998, at the behest of original Respondent No.1, the Appellant made an Application to MHADA for transfer of the rights in the suit premises in his favour. The original Respondent No.1 gave his No Objection without any hesitation. On the basis of the said Application, the Estate Manager-II, MHADA, by letter dated 20th June 1998, called upon the Appellant to submit No Objection. Accordingly, the Appellant submitted No Objection dated 13th October 1998, signed by all the family members of original Respondent No.1 and by letter dated 29th November 1998, the Estate Manager-II, MHADA transferred the suit premises in the name of the Appellant. The society has also transferred the share certificate in the name of the Appellant.

g. The Appellant claims that he is the exclusive owner of the suit premises.

h. According to the Appellant, in October 1999, original Respondent No.1 and Respondent No.2 lodged a false complaint with Respondent No.3 alleging that the transfer of premises in the name of the Appellant was not at the instance of the original Respondent No.1. Respondent No.3, at the instance of original Respondent No.1 and Respondent No.2, threatened the Appellant with

arrest. The Appellant therefore had an apprehension that the Respondents would forcibly take possession of the suit premises.

i. In these circumstances, the Appellant filed the present suit for a declaration that he is the sole and exclusive owner of the suit premises and for an injunction restraining the Respondents from interfering with the exclusive possession of the suit premises.

4. The case of the Respondents is as under :

a. The original Respondents No.1 and 2 have filed Written Statement and have denied all the averments made in the Plaint. It was the objection of the Respondents that the spouse and daughters of original Respondents No.1 and 2 were not made parties and, therefore, the suit has to be dismissed.

b. It is the case of the Respondents that, in 1966, MHADA allotted the suit premises to original Respondent No.1 for his residence. The original Respondent No.1, the Appellant and Respondent No.2, along with their sister, were residing in the suit premises. After the marriage of the sister, original Respondent No.1, the Appellant and Respondent No.2 continued to reside in

the suit premises.

c. In 1993, Respondent No.2 shifted to Thane as his wife got employment in Thane. The Appellant and the original Respondent No.1 continued to reside in the suit premises.

d. In 1977, the Mill where Respondent No.1 was employed was closed. Original Respondent No.1 and the Appellant were jobless. Till 1993, original Respondent No.1 and the Appellant were residing along with their families in the suit premises. Thereafter, as per mutual agreement and for the sake of convenience, it was decided that original Respondent No.1 would look after their mother at the native place and would also look after the agricultural land and the property situated at the native place being Village 'Lep'. The original Respondent No.1 used to visit the suit premises frequently and pay the outgoings of it to MHADA.

e. In or around 1998, the Appellant requested the original Respondent No.1 and other family members to sign on some papers required for renovation of the suit premises and extension of the building and for submitting the same to the

local authority and MHADA. The original Respondent No.1 signed some papers in good faith and having trust in the Appellant. The Appellant misused the said trust and by misrepresentation and fraud and by forging the signatures of the wife and daughters of original Respondent No.1, got the suit premises transferred in his name.

f. The original Respondents No.1 and 2 have denied that it was mutually agreed between the Appellant and original Respondent No.1 that the Appellant would pay the purchase price of the suit premises to MHADA and would also help original Respondent No.1 for the marriage of his daughter. It was also denied that the Appellant is the sole and exclusive owner of the suit premises and original Respondents No.1 and 2 are not having right in the same.

g. It was further denied that, as per arrangements, the name of original Respondent No.1 was incorporated in the record of the society. It is the contention of the Respondents that the Appellant had made an Application to MHADA with intent to grab the suit premises. The Appellant had forged the signatures of original Respondent No.1 and his family members and fraudulently got this transfer in his name. A complaint was filed by the original

Respondent No.1 in respect of the same.

h. It is the further contention of Respondents No.1 and 2 that the Appellant had no right, title and interest in the suit premises, and, therefore, the suit is required to be dismissed with costs.

5. The Trial Court framed the following issues.

ISSUES

1. *Does plaintiff prove that, he become the exclusive owner of the suit premises i.e. Room No.516, Azad Nagar, Building No.32, Alfa Co-operative Housing Society Limited, Andheri (W), Mumbai 400058, as per family arrangement between him and defendants No.1 and 2 ?*

2. *Does he further prove that, the defendants No.1 and 2 had lodged false complaint to defendant No.3, with a view to deprive the plaintiff from suit room ?*

3. *Does defendant No.1 prove that, the plaintiff got mutated the suit premises in his name, as owner, through MHADA, on the basis of false and forged documents practicing fraud on him and without his consent ?*

4. *Whether the plaintiff is entitled to the permanent injunction restraining the defendants and anybody on their behalf from causing obstruction and interference, in his possession with title over the suit property ?*

5. *What order and relief ?*

6. The findings of the Trial Court on the aforesaid issues framed are as follows:

ANSWERS

1. *In the negative.*
2. *In the negative.*
3. *In the affirmative.*
4. *In the negative.*
5. *As per final order.*

7. In the suit, the Appellant led his own evidence. The Respondents led the evidence of Respondent No.2, Respondent No.1(b)(daughter of original Respondent No.1), Indira Pedamkar (wife of original Respondent No.1), Respondent No.1(a)(daughter of original Respondent No.1) and the original Respondent No.1. All these witnesses were also cross examined.

8. By a Judgement dated 23rd June 2010, the Bombay City Civil Court at Dindoshi, Mumbai, dismissed the Suit of the Appellant. It is in these circumstances that the Appellant has filed the present Appeal. The Appellant has also filed the aforesaid Interim Application for producing the additional

evidence on record. This Interim Application has to be heard along with the First Appeal.

POINTS FOR DETERMINATION IN THE FIRST APPEAL

9. The following points arise for determination in the present First Appeal.
- (i) Whether the Trial Court was correct in dismissing the suit ?
 - (ii) Whether the Appellant is entitled to a declaration that he was the sole and exclusive owner of the suit premises being Room No.516, Azad Nagar, Building No.32, Alfa Co-Operative Housing Society Limited, Andheri (West), Mumbai – 400 058 ?

SUBMISSIONS OF THE APPELLANT IN THE FIRST APPEAL AND IN INTERIM APPLICATION NO. 14722 OF 2023.

10. Mr Siddiquie, the Learned Advocate for the Appellant, first made submissions in respect of Interim Application No.14722 of 2023.

11. Mr Siddiquie submitted that the Appellate Court possessed wide discretionary jurisdiction under Order XLI Rule 27(1)(aa) and 27(1)(b) of the CPC to permit additional evidence at the appellate stage where the party

demonstrates that, despite due diligence, the evidence was not within its knowledge or could not be produced earlier when the decree was passed, or the Court requires such evidence to enable it to pronounce Judgement or for any other substantial cause. Mr Siddiquie submitted that this jurisdiction is exercised to subserve the ends of justice provided the proposed evidence aligns with the pleadings and is not intended to fill the lacunae arising from negligence.

12. Mr Siddiquie submitted that, in the present case, the additional evidence i.e. the letter dated 20th June 1998, was procured only in December 2021 via the Right to Information Act, 2005 (**'RTI Act'**), despite prior diligent efforts. Mr Siddiquie submitted that the documents sought to be produced directly corroborate the pleaded case of consent, joint appearance, and compliance for tenancy transfer, thus aligning squarely with the suit pleadings and warranting admission under both limbs of Rule 27.

13. Further, Mr Siddiquie submitted that the official records and public documents obtained from statutory bodies such as the Maharashtra Housing and Area Development Authority under the RTI Act, which strike at the core of

the '*lis*' and unequivocally rebut the foundational premises of the impugned decree (i.e. absence of prescribed format compliance or proof of consent/joint appearance), are mandatorily admissible in appeal where their authenticity is unimpeachable and no bonafide challenge to veracity is mounted.

14. Mr Siddiquie further submitted that the tendered documents irrefutably establish the original Respondent No.1's and the Appellant's physical joint appearance before the officer on or about 20th June 1998, contemporaneous signing of the signature variation explanation, and the Authority's inward acceptance—thus fulfilling all requisite formalities for change of name and transfer as pleaded, and destroying the Trial Court's erroneous findings. Further, in the context of the Interim Application, Mr Siddiquie submitted that the advance age of the litigant (79 years) coupled with the Trial Advocate's contemporaneous ill-health/old age, along with the antiquity of the public record constitutes "sufficient cause" and "other substantial cause" under Order XLI Rule 27(1)(aa) and (b) of the CPC, justifying admission of the documents to avert irremediable prejudice.

15. As far as the First Appeal is concerned, Mr Siddiquie submitted that the

Trial Court's findings are vitiated by the failure to appreciate contradictions, omissions, and admissions in the Respondents' evidence, particularly in the context of the Written Statement which contains only general/non-specific denials of the averments in the Plaint. The Written Statement vaguely denies consent/transfer without particulars, contrary to Order VIII Rules 3 and 5 of the CPC which require specific denials.

16. In the context of non specific denials in the Written Statement, Mr Siddiquie submitted that while paragraph 8 of the Written Statement admits paragraph 1 of the Plaint (regarding allotment in 1966), paragraphs 9 and 10 of the Written Statement do not dispute paragraphs 2 and 3 of the Plaint and paragraphs 12 and 17 of the Written Statement make blanket denials of arrangement/consent/transfer without addressing specific documents or events pleaded. Mr Siddiquie submitted that such non specific denials amount to admission on the part of the Respondents.

17. Further, Mr Siddiquie submitted that, in his Written Statement and Affidavit-in-lieu of Examination-in-Chief, the original Respondent No.1 denies giving consent to the transfer, but admits in cross-examination that he signed

the No Objection Certificate and transfer letter. This contradicts the denials in the Written Statement.

18. Further, Mr Siddiquie submitted that the Written Statement does not contain any particulars of the fraud pleaded by the Respondents. Mr Siddiquie submitted that, in their Examination-in-Chief, the wife and daughters of original Respondent No.1 denied their signatures and the No Objection Certificate, but their cross-examination reveals tutoring by the original Respondent No.1. Further, Mr Siddiquie submitted that the evidence of the Respondents also does not contain any particulars or details of fraud.

19. Mr Siddiquie submitted that, for all the aforesaid reasons, the Judgement of the Trial Court ought to be set aside.

20. Further, Mr Siddiquie submitted that the findings of the Trial Court in respect of the issues framed by it are perverse. As far as Issue No.1 is concerned, Mr Siddiquie submitted that the Trial Court erred in holding that the Appellant had failed to prove ownership. Mr Siddiquie submitted that the Trial Court failed to comply with Order VIII Rule 5 of the CPC as the Respondents'

Written Statement contained only vague denials regarding the family arrangements and the financial contributions pleaded by the Appellant. Further, Mr Siddiquie submitted that it is undisputed that the Appellant has been in exclusive possession of the suit premises since 1998-1999. Further, the additional evidence sought to be adduced in terms of MHADA letter dated 20th June 1998 conclusively answers Issue No. 1 in the affirmative by proving the "*Consensus-ad-idem*" which the Trial Court found missing in paragraph 21 of the Judgement.

21. As far as Issue No.2 is concerned, Mr Siddiquie submitted that the Trial Court held that the complaint filed by original Respondents No.1 and 2 to Respondent No.3 was not false on the ground that the forgery "appeared probable". Mr Siddiquie submitted that findings of forgery are perverse and the complaint alleging such forgery was inherently false and malicious, intended solely to harass the Appellant.

22. As far as Issue No.3 is concerned, Mr Siddiquie submitted that the Trial Court answered the same in the affirmative holding that the Respondents had proved that the documents were forged. Mr Siddiquie submitted that this

finding is legally unsustainable and contradictory to the record. In this context, Mr Siddiquie submitted that the burden to prove Issue No. 3 lay strictly on original Respondent No. 1. The original Respondent No.1 attempted to discharge this burden by filing an Application Exhibit 44 to refer the disputed documents to a Handwriting Expert. However, the Trial Court dismissed this application by an Order dated 8th June 2010, holding that "*It is not necessary to send the documents to the Handwriting Expert*". Mr Siddiquie submitted that the Respondents accepted the said decision and did not file an appeal against the same. In this context, Mr Siddiquie also submitted that having refused to send the documents to the Handwriting Expert, the Trial Court could not subsequently rule that forgery was "probable". A finding of forgery requires a high standard of proof, not mere probability. Mr Siddiquie submitted that the Trial Court effectively penalized the Appellant for a "forgery" that it explicitly refused to investigate scientifically.

23. As far as Issue No. 4 is concerned, Mr Siddiquie submitted that the Trial Court erred in answering the said Issue in the negative. Mr Siddiquie submitted that, even assuming for the sake of argument, that the title was not proved, the Appellant was admittedly in settled exclusive possession. Under the settled law,

a person in settled possession cannot be dispossessed or interfered with except by due process of law. Therefore, the injunction ought to have been granted to protect the Appellant's possessory rights.

24. Next, Mr Siddiquie submitted that the Trial Court erred in dismissing the suit. Mr Siddiquie submitted that, in view of the submissions on Issues No. 1 to 4 and the additional evidence produced, the suit is liable to be decreed.

25. In these circumstances, Mr Siddiquie submitted that Interim Application No. 14722 of 2023 be allowed, the impugned Judgement be set aside and the suit be decreed with costs.

SUBMISSIONS OF RESPONDENTS NO.1(a), 1(b) AND 2 IN THE FIRST APPEAL AND INTERIM APPLICATION.

26. Mr Rajesh Doshi, the Learned Advocate appearing on behalf of Respondents No.1(a), 1(b) and 2, supported the Judgement of the Trial Court. Mr Doshi also pointed out that, in view of the redevelopment of the suit building, the suit premises were demolished by the developer in 2024.

27. Mr Doshi submitted that, in the suit, the Appellant had claimed that, in 1982, there had been a mutual agreement between the Appellant and the original Respondent No.1, whereby the Appellant would pay the purchase price of the suit premises regularly in installments to MHADA and also financially help the Respondent No.1 for the marriage of his daughter. However, for the first time in 1998, the Appellant made a claim in respect of the suit premises and no claim in any form during the entire period of 17 years from 1982 to 1998 was made. Mr Doshi submitted that there has not been any single instance or correspondence or pleadings in the Plaint, about any claim being made in that regard, during the said period of 17 years, which fact strongly proves that the Appellant, with dishonest intentions, made a claim in respect of the suit premises in the year 1998.

28. Mr Doshi submitted that the case of the Appellant in the Plaint before the Trial Court was that the original Respondent No.1 is the original tenant/allottee/owner of the suit premises. In 1982, MHADA had agreed to convert the tenancy rights into ownership rights for a price of Rs.7,000/-. As per the mutual agreement entered into between the Appellant and the original Respondent No.1, the Appellant would pay the purchase price of the suit

premises regularly in installments to MHADA and also financially help Respondent No.1 for the marriage of his daughter. Mr Doshi submitted that it was further the case of the Appellant that though the name of original Respondent No.1 would be recorded as a Member of the society, and the share certificate would be obtained in the name of original Respondent No.1, however, for all purposes and at all times the Appellant would be entitled to all the right, title and interest in the suit premises as an owner and Respondents No.1 and 2 and their family members shall not claim any interest therein.

29. Mr Doshi submitted that the facts which are admitted and undisputed by the parties in the present proceedings are that the original Respondent No.1 was working as a Mill worker, and in view of his service, in the year 1966, he was allotted the suit premises. In 1982, the society was formed under the provisions of Maharashtra Co-Operative Societies Act, 1960, wherein, the suit premises was existing, and thereby, the original Respondent No.1 was allotted a share certificate. Till 1998, the suit premises were standing in the name of the original Respondent No.1 in all records.

30. Mr Doshi submitted that, from the pleadings of the Plaintiff and from the

aforesaid admitted/undisputed facts, it emerges that it was the case of the Appellant before the Trial Court that he has purchased the suit premises in the year 1982 from the original Respondent No.1 by entering into an oral agreement, for a monetary consideration. It was also the case of the Appellant that, after a passage of more than 17 years, the Appellant, for the first time, made a claim in respect of the suit premises and filed the present suit against the Respondents. The only prayer sought in the present suit was a declaration that he is the sole and exclusive owner of the suit premises.

31. Next, Mr Doshi submitted that the following aspects are required to be considered, while deciding the present appeal.

(i) That the suit was filed after a passage of 19 years for seeking declaration of ownership rights on the basis of an oral agreement alleged to be entered in the year 1982.

(ii) That the Appellant had not filed any suit for specific performance of the oral agreement, alleged to be entered in the year 1982.

(iii) Mere production of statements does not prove the payment of the alleged consideration, as sought to be claimed by the Appellant.

(iv) As observed by the Trial Court in paragraph No.10 of the

Judgement, the Appellant has failed to prove the payment of consideration amount to the original Respondent No.1 as sought to be claimed in the suit.

32. Mr Doshi submitted that it is required to be considered that transfer of immovable property can only be done through duly stamped and registered sale deed as per the provisions of the Transfer of Property Act, 1882 and not by General Power of Attorney/Affidavits/Declarations as held by the Hon'ble Supreme Court in *Suraj Lamp & Industries (P) Ltd. (2) Vs. State of Haryana and Another (2012) 1 SCC 656*. Mr Doshi further submitted that transfer of immovable property requires compulsory registration under the provisions of the Registration Act, 1908 and particularly Section 17 thereof. In support of his submission, Mr Doshi relied upon the Judgement of the Hon'ble Supreme Court in *Ramesh Chand (D) Thr. Lrs. Vs. Suresh Chand & Anr. AIR 2025 SC 4108*. Mr Doshi submitted that the suit before the Trial Court was hopelessly barred by law of limitation as the declaration of ownership was sought for the first time in the year 1999 on the basis of the oral agreement of the year 1982. Further, Mr Doshi submitted that the signature of the original Respondent No.1 was obtained by false misrepresentation and he has categorically deposed before

the Trial Court that he had never appeared before the Notary, as claimed by the Appellant. Further, Respondents' witnesses have categorically deposed before the Trial Court that they had never appeared before the Notary and their signatures on the alleged NOC are forged and bogus. The original Respondent No.1's witness Indira Pedamkar has also deposed before the Trial Court and also in her cross-examination that she admitted that she is uneducated and cannot sign and had not signed any NOC, as sought to be claimed by the Appellant. Further, the Appellant had examined only himself and did not examine the Notary Advocate and/or any other witness in support of his case, which fact clarifies that the documents alleged to be executed by the original Respondent No.1 and his family members are bogus and signatures were forged. Further, Mr Doshi submitted that as per the ruling of this Court in *Nawman Amin Malik Vs Bhagat Housing Development (Pvt) Limited (in Civil Revision Application No. 569 of 2011)*, it had been held that a notarized affidavit could not be read and/or considered as a valid document, in the event of the same not bearing the serial number of the notary register.

33. Further, Mr Doshi submitted that, in 1998, the Appellant, on the basis of false representations, forged and bogus documents, got the suit premises

transferred in his name, which case has been specifically denied by the original Respondents No.1 and 2 in their Written Statement and particularly, in paragraph No.4 therein.

34. Mr Doshi submitted that the Appellant has failed to prove the alleged documents of transfer, which were strongly disputed by the Respondents. The Appellant examined himself as the only witness and did not examine any other witness in support of his case. The documents which the Appellant had relied upon are subsequent to the alleged transfer of the suit premises by using false, forged and fabricated documents and as such, those documents cannot be looked into, under any circumstances.

35. Mr Doshi also submitted that the original Respondent No.1 had proved the case of false representation, forged and bogus documents by examining himself, Respondent No.2, his two daughters and his wife.

36. Further, Mr Doshi submitted that Respondent No.2, in his evidence, had produced on record before the Trial Court a document, being a letter of the year 1999 to the Society, duly signed by original Respondent No.1, raising an

objection to transfer of the suit premises in the name of the Appellant by the Society in the suit building and the said document was marked Exhibit 33. However, the Appellant has not annexed the said document along with the present paper book.

37. Further, Mr. Doshi submitted that the original Respondent No.1 had filed a suit in 2006, and, upon his death, the legal heirs proceeded with the said suit, being suit No.2872 of 2006, which came to be disposed of by the Trial Court vide its order dated 2nd September 2023, wherein, it has been observed by the Trial Court that the original Respondent No.1 alone is the occupant/tenant of the suit premises and the transfer of the suit premises in favour of the Appellant by MHADA is illegal, null and void. Furthermore, in the said suit, the Trial Court had held that the Appellant is not an authorized occupant/tenant of the suit premises. As the issue of limitation was answered against the Respondents herein, the Respondents herein had preferred First Appeal No.1022 of 2023, which is admitted and is pending for final hearing on the limited issue of limitation.

38. With regard to the Interim Application No. 14722 of 2023 filed by the

Appellant, Mr Doshi submitted that the Appellant has sought to allow him to produce on record the original letter of Respondent No.1's alleged letter at Exhibit C thereto, contending that the said document had been obtained under the RTI Act. Mr Doshi submitted that the Respondents strongly oppose the said application as the alleged letter at Exhibit C is a bogus document and not executed by the original Respondent No.1, as sought to be claimed by the Appellant.

39. Further, in the context of the Interim Application, Mr Doshi submitted that in the letter of 20th June 1998, MHADA had stated that the signature of the original Respondent No.1 on the alleged NOC/Affidavit differs and had called upon the original Respondent No.1 to remain personally present. Therefore, the Appellant contended that the original Respondent No.1 remained present before the MHADA on 20th June 1998, which has never happened, and which fact was also denied in paragraph no.17 of the Written Statement.

40. Further, Mr Doshi submitted that the alleged letter at Exh.C is in response to the MHADA's letter dated 20th June 1998 i.e. of the very same day, which raises serious doubt about the genuineness of the alleged letter of 20th

June 1998, as the original Respondent No.1 had not addressed any such letter in his hand writing and has not even signed any such letter.

41. Further, Mr Doshi submitted that prior to the said Application, the Appellant took out Interim Application No.4266 of 2021, for production of the very same documents, which was withdrawn on 11th April 2023.

42. Mr Doshi submitted that, for all the aforesaid reasons, the First Appeal and the Interim Application ought to be dismissed with costs.

ANALYSIS AND FINDINGS

INTERIM APPLICATION NO. 14722 OF 2023

43. In the Interim Application, the Appellant has sought permission to produce in Appeal letter dated 20th June 1998 addressed to MHADA in response to MHADA's letter dated 20th June 1998, whereby due to variation in the signature of original Respondent No.1, explanation was sought by MHADA, and according to the Appellant, he and original Respondent No.1 appeared before the MHADA Authorities, signed and submitted the said letter in the presence of MHADA Authorities, which was duly acknowledged by MHADA

by recording the inward number.

44. The Appellant has submitted that the said document i.e. letter dated 20th June 1998 addressed to MHADA could not be produced earlier as the Advocate M. S. Menon, who was conducting the trial at that time on behalf of the Appellant, was of old age and was suffering from various old age ailments. Similarly, the Appellant, at the relevant time, was also aged 65 years, and, therefore, the said document could not be produced.

45. Further, the Appellant has submitted that the official records and public documents obtained from statutory bodies such as MHADA under the RTI Act are admissible in Appeal where their antiquity is unimpeachable and no bonafide challenge to the authenticity is mounted. Further, the Appellant has submitted that the advanced age of the Appellant (79 years), coupled with the Trial Court Advocate's ill health and old age, along with the antiquity of the said letter, constitutes 'Sufficient cause' and 'Other substantial cause' under Order XLI Rule 27 (1)(aa) and (e) of the CPC.

46. On the other hand, the Respondents have opposed taking on record of

the said letter dated 20th June 1998 on the ground that it is a bogus document and not executed by the original Respondent No.1. Further, the Respondents have contended that the said letter ought not to be taken on record as original Respondent No.1 has contended in his Written Statement that he never remained present before the MHADA Authorities.

47. Further, the Respondents have also submitted that the fact that MHADA wrote a letter dated 20th June 1998, and the response was on the same day i.e. 20th June 1998, also creates serious doubt about the genuineness of the said letter dated 20th June 1998.

48. Order XLI Rule 27 of the CPC reads as under:

27. Production of additional evidence in Appellate Court -

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

49. The Appellant has shown that the letter dated 20th June 1998 could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against him was passed. Further, in my view, if the document was available with the Appellant, there was no reason why the Appellant would not have produced the same. Further, the Appellant has stated that he applied for the document by an Application dated 22nd December 2021 under the RTI Act to MHADA and received the document thereafter. This itself shows that the document was not earlier available.

50. The said document has been obtained by the Appellant from MHADA under the RTI Act. The same is very clear from the stamp on the document which states that it has been obtained under the RTI Act. Therefore, the authenticity of the said document cannot be doubted. Further, the said document is also relevant to the present Appeal. As submitted by the Appellant, it could not be produced earlier due to the advanced age and ill health of the Appellant's Advocate and also the advanced age of the Appellant himself.

51. For all the aforesaid reasons, I am inclined to take the said document on record under the provisions of Order XLI Rule 27 of the CPC. Accordingly, the said letter dated 20th June 1998 is taken on record and marked as an Exhibit (subject to correctness of the contents thereof and subject to proof of execution by original Respondent No.1).

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52. The Appellant has sought a declaration that he is the sole and exclusive owner of the suit premises.

53. In these circumstances, the onus of proof is on the Appellant to prove that he is the sole and exclusive owner of the suit premises.

54. It is the case of the Appellant that he has purchased the suit premises in 1982 from the original Respondent No.1 by entering into an oral agreement for a monetary consideration.

55. In order to succeed, the Appellant has to prove the same. The Appellant

has not proved as to why, despite admittedly having available property at the native village, original Respondent No.1 did not have Rs.7,000/- to purchase the suit premises from MHADA and did not have the money to get his daughter married. Therefore, in my view, the very basis of the oral agreement pleaded by the Appellant is not proved.

56. Further, the Appellant has also not proved as to why, if in 1982, it was agreed that the Appellant would be the sole and exclusive owner of the suit premises, the suit premises were not transferred in his name at that time and share certificate was not issued in his name.

57. The Appellant has further not proved as to why he waited for 16 to 17 years to get the suit premises transferred in his favour if the oral agreement was of the year 1982.

58. Further, the Appellant has not proved payment of consideration to Respondent No.1. The Appellant has merely produced the statement. The said statement cannot prove the payment of consideration to original Respondent No.1.

59. In my view, all the aforesaid, by itself, makes the case of the Appellant improbable.

60. Further, the original Respondent No.1 has contended that his signature had been obtained on the document of transfer by misrepresentation. He has deposed to that effect in paragraph No.4 of his Affidavit-in-lieu of Examination-in-Chief dated 12th October 2009. Paragraph 4 reads as under:

4. In 1998 I was in search of groom for my daughter Sharmila and hence in April 1998 I came to Mumbai and stayed with Baban for few days at Kalwa Thane. At that time Plaintiff had brought some papers in written in English and stated that my signatures are required forth coming out renovation in the suit premises and extension to the building. He further stated put everyone in the Building had already submitted papers and because my signature everyone is delayed. As the papers are in English. I informed him to keep the papers because Baban and his wife were not in the house at that time. Plaintiff then stated that, whether I had no trust on him. I did keep trust upon the Plaintiff and I signed. I was not knowing that I was signing no objection certificate to transfer. I was represented by Plaintiff that signature was required on the papers, required for extension of building. I never went to Notary nor any Advocate Krishna Malaw. I never seen then nor did they see me while signing I never gave consent to transfer the tenancy of suit premises in the name of Vasant.

61. Therefore, as far as the signature of original Respondent No.1 is concerned, it is the word of the Appellant against the word of original

Respondent No.1 as to whether there was any misrepresentation or not. However, the Appellant has deposed that the Affidavit was notarised by Advocate Shri L G Waingarkar and the signatures of the Appellant and Respondent No.1 were identified by Shri Krishna Malandkar, who signed the same. In his deposition, the original Respondent No.1 has denied the same. In these circumstances, the Appellant should have examined the Notary and Shri Krishna Malandkar and should have produced the notarial register. The Appellant's failure to do so creates doubt about the probability of his case and makes the case of original Respondent No.1 of misrepresentation more probable.

62. Further, as far as the signatures of other family members of original Respondent No.1 are concerned, each one of them has stepped into the box and deposed that they have not signed the documents. This deposition has not been shaken in cross-examination. The only answer of the Appellant is that the wife and two daughters of original Respondent No.1 are tutored witnesses and they have been tutored by the original Respondent No.1 to deny their signatures. In my view, simply because the said witnesses have deposed that Respondent No.1 requested them to give evidence, the same cannot mean that they were tutored

witnesses. In my view, simply by submitting that they are tutored witnesses, cannot take the case of the Appellant any further. The Appellant should have examined some person who had seen the wife and daughters sign the documents and/or should have led the evidence of a Handwriting Expert, which the Appellant failed to do. In the light of the aforesaid, it cannot be accepted that original Respondent No.1's wife and two daughters had signed the documents of transfer. This creates further doubt about the probability of the case of the Appellant.

63. It is important to note that not only did the Appellant not examine a Handwriting Expert but when the Respondents made an Application for appointment of a Handwriting Expert, the Appellant objected to the said Application on the ground that there is no foundation in the evidence of the Respondents' witnesses for such a request being made. The Appellant sought the rejection of the said Application. This is one of the reasons as to why, by an Order dated 8th June 2010, the City Civil Court at Dindoshi, Mumbai dismissed the said Application.

64. This leaves me to deal with the letter dated 20th June 1998 which has

been produced by the Appellant on record in this Appeal and marked as an Exhibit (subject to correctness of the contents thereof). It is the case of the Appellant that the said document shows that the original Respondent No.1 had appeared before the MHADA Authorities to verify his signature and, therefore, the case of the Respondents, that original Respondent No.1 had signed under misrepresentation, is false. In my view, the said document, by itself, does not prove that it was signed by original Respondent No.1 and further that it was signed in the presence of the MHADA Authorities. In paragraph 17 of his Written Statement, the original Respondent No.1 has denied that original Respondent No.1 remained present before the MHADA Authorities and signed the transfer papers. In the light of the said denial of the original Respondent No.1, the correctness of the contents of the said letter and its execution by original Respondent No.1 ought to have been proved. The Appellant has not sought to lead any additional evidence to prove the correctness of the contents of the said letter or its execution by the original Respondent No.1. In these circumstances, and in light of the other evidence against the Appellant, the case of the Appellant in respect of the said letter dated 20th June 1998 cannot be believed.

65. In light of aforesaid findings, I have not dealt with the Judgements referred to by the Respondents.

66. In light of the aforesaid findings and for all the aforesaid reasons, in my view, the Judgement dated 23rd June 2010 of the Trial Court does not call for any interference. The Trial Court has rightly dismissed the suit. In these circumstances, the present Appeal is required to be dismissed.

67. The Point for Determination No.(i) is answered in the affirmative and the Point for Determination No.(ii) is answered in the negative.

ORDER

INTERIM APPLICATION NO. 14722 OF 2023

1. The Interim Application is allowed and the letter dated 20th June 1998 is taken on record and marked as an Exhibit (subject to the correctness of the contents thereof and subject to proof of execution by the original Respondent No.1).

FIRST APPEAL NO. 1085 OF 2010

In light of the aforesaid discussion and for all the aforesaid reasons:

- a. First Appeal No.1085 of 2010 is hereby dismissed.
- b. In the facts and circumstances of the case, there shall be no order as to costs.
- c. In light of the dismissal of the First Appeal, all other Interim Applications / Civil Applications are also rendered infructuous and are disposed of as such.

[FIRDOSH P. POONIWALLA, J.]