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	Exhibit No.79		

<u>IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, KURKHEDA,</u> <u>DISTRICT : GADCHIROLI.</u> Presided over by N.P. Deshpande (Civil Judge Junior Division)		
REGULAR DARKHAST NO. 01/2013 Namdeo Mankar Vs. Aabid Hussain and others		
OBJECTOR		Parasram Somaji Uikey, Age: 72 Years, Occupation : Labour, R/o Rana Pratap Ward, Kumbhar Mohalla, Kurkheda Ta.:Kurkheda District :Gadchiroli
Versus		
DECREE HOLDER		Namdeo Jayram Mankar, Age: 58 Yrs, Occupation: Retired Teacher, R/o Kurkheda, Ta. Kurkheda, Dist. Gadchiroli.
		And
JUDGMENT DEBTORS		1. Aabid Husen Nijam Husen Sayyad (died) Through Legal Representatives, 1(a) Nyaj Aabid Husen Sayyad, Age: 38 Yrs, Occupation: Nil, R/o Kurkheda, Ta. Kurkheda, Dist. Gadchiroli. 1(b) Shiba Tarnnum Aijaj Khan, Age: 27 Yrs, Occupation: Nil, R/o Kamlanagar, Ta. Desiaganj, Dist. Gadchiroli.

	1(c) Yetesham Aabid Husen Sayyad, Age: 21 Yrs, Occupation: Nil, R/o Kurkheda, Ta. Kurkheda, Dist. Gadchiroli. 1(d) Javed Hussain Abid Hussain Sayyad, Age: 45 Yrs, Occupation: Nil, R/o Kamlanagar, Ta. Desiaganj, Dist. Gadchiroli. 1(e) Faujiya Abid Hussain Sayyad, Age: 42 Yrs, Occupation: Nil, R/o Juni Wadsa, Ta. Desiaganj, Dist. Gadchiroli. 2. Nafis Jaha Aabid Husen Sayyad, Age: 49 Yrs, Occupation: Household, R/o Kurkheda, Ta. Kurkheda, Dist. Gadchiroli.
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CLAIM:- Objection under Order XXI, Rule-97 of the Civil Procedure Code.

Appearance:

Ld. Advocate Mr. R.B. Khanke for the Objector.

Ld. Advocate Mr. V. K. Nyalewar for Decree Holder.

Ld. Advocate Shri M. T. Saudagar for J.D. No. 1 and 2

ORDER BELOW EXH 79
(Delivered on 6th August, 2026)

1] Present objection is filed by the objector for declaration of his rights, title and interests against Decree holder on the basis of his ownership and possession on the Open land situated in CTS No.204, admeasuring 178.56 Sq.Mtrs and especially out of it 139 .00 Sq. Mtrs Gaothan land which is bounded at the East-Road and House of one Sadashiv Uikey, at the West- Land of one Hira Motwani, at the North-

Remaining Land of the Objector Parasram Somaji Uikey. and at the South- House Property belonging to the Nafis Jaha Abid Husen Sayyad situated at Ambedkar Ward, Kurkheda District Gadchiroli [Hereinafter referred as the objector's property or the decretal property] which was purchased by him from J.D. No.2 on the strength of the registered sale deed dated 30.05.1996.

The objector's case is as under :-

2] Objector is the owner and possessor of the his property. Out of total admeasuring 178.56 Sq.Mtrs open land especially 139.00 Sq. Mtrs Gaothan land was purchased by him on the basis of the registered sale deed dated 30.05.1996 executed by J.D.No.2 Nafis Jahan Abid Husen Sayyad by accepting the consideration. Since from the date of the sale deed, the objector is having possession and enjoyment over it. As per the revenue record, the land CTS No. 204 is entered as the encroachment land upon the Government Land. On dated 30.05.2015 the name of the objector is also entered on the Property Card of the CTS record being encroacher on the suit property. As it is the encroachment upon the government land, it is not belonging to the decree holder. Therefore, he is not entitled for execution of the decree, its subject and in fact decree holder without having right, title and interest upon it, being the tenant in the decretal property filed R.C.S. No. 13/2001 on 08.02.2001 without joining the objector.

3] So also, the objector was not having knowledge about the aforementioned suit, its decree etc. In fact, objector had purchased the decretal property on 30.05.1996. Therefore, the decree holder is not having the right to execute the same against him. Hence the

objector prayed that he is having right, title and interests upon the decretal property on the strength of the sale deed dated 30.05.1996 executed by J.D.No.2 in his favour, it be declared that the decree in Old R.C.S.No.13/2001 or New R.C.S.No.12/2009 dated 23.02.2012 is not binding upon him and the possession warrant issued by this Court may kindly be cancelled.

The say filed by the Decree Holder on objection is as under :-

4] Decree Holder filed his say at Exh-90 and resisted the objection. He denied all adverse contentions in the objection and resisted the objection on the following grounds. Objector has no legal title or any other nexus with the decretal property. As per his contentions in the Special Pleadings, in view of [Old R.C.S.No.13/2001] and New R.C.S.No.12/2009 he had filed the suit against J.D.No.1 Abid Husen Sayyad and his wife J.D.No.2 Nafis Jaha Abid Abid Husen Sayyad for eviction in the structure on CTS No.204 at Kurkheda. This Court being Trial Court held them by virtue of Judgment and Decree dated 23.02.2012 to be tenants by rejecting their plea that they have become the owners of the decretal property on the basis of the so called agreement deed dated 14.10.1986 allegedly executed by defendant No.4 & 5 [The brothers of Decree Holder] in their favour. The issues regarding J.D.No.1 & 2's alleged ownership and their further claims for legal protection under section 53-A of the Transfer of the Property Act were denied holding them the tenants of the Decree Holder. Also they were directed for mandatory injunction and to hand over the possession of decretal property to the decree holder within 3 months , to pay the unpaid rent at their own costs.

5] That J.D.No.1 & 2 being aggrieved by the Judgment in

aforementioned suit filed Regular Civil Appeal No.08/2012 before Hon'ble Principal District Court, Gadchiroli who pleased to confirm this Court decree vide Judgment and decree dated 17.01.2018. That defendant No. 1 & 2 never brought the fact before Hon'ble Principal District Court, Gadchiroli about so called registered sale deed dated 30.05.1996 in favour of the objector. The objector himself claims to be the neighbor at the northern side of the decretal property where he is running his Krushi Kendra since considerable period in the past. It is unimaginable and untrustworthy that he was not aware of the litigation between decree holder and Judgment debtors in trial Court as well as in the Appellate Court.

6] That J.D.No. 1 & 2 also approached before the Hon'ble Bombay High Court, Bench at Nagpur in Second Appeal No.239 of 2018. However, Hon'ble Bombay High Court, Bench at Nagpur rejected the claim of the J.D.No. 1 & 2 vide judgment dated 28.06.2024 by dismissing the second appeal and pleased to held that persons cannot transfer a property that they do not own or have the right to transfer. Thus, this Court upto the Hon'ble High Court Bench at Nagpur being Second Appellate Court upheld Decree Holder's title upon the decretal property, refused the right, title or interest of the J.D. No.1 & 2 in it and also refused the legal protection of Sec.53-A of the Transfer of Property Act to retain the possession to judgment debtors. The Objector's so called predecessor i.e. J.D.No.2 Nafis Jaha never had been the owner, holding transferrable right, title or interest in the decretal property. Therefore, the objector did not acquire title, possession or any other legal interest in the decretal property. Hence, Decree Holder prayed to dismiss the objection by imposing

exemplary cost of Rs.25000/-

7] Surprisingly, Judgment Debtor No.1a Nyaz Husen Sayyad filed his say at Exh-92 and admitted the following facts in the objection. objector is residing at the property described in the objection in 178.56 Sq.Mtrs area and execution of registered sale deed dated 30.05.1996, its contents, attestation and objector was put in its possession, he is having right, title and interests in it on the basis of the aforementioned registered sale deed. So also, Vide Special Pleading J.D. No.1a submitted that the objector's property is different than the decretal property. Therefore, there is no question of execution of the Decree Holder over it against him (Judgment Debtor/ Judgment Debtors). Decree Holder is not the owner of the decretal property. Hence, J.D.No.1a prayed to allow the objection or to pass the suitable orders.

8] The rest of J.D. failed to file their say. However, J.D.No.2 Nafis Jaha admitted the say filed at Exh-92 of J.D.No.1a vide her pursis Exh-93.

9] On the rival pleadings of the parties and as per arguments of the Learned advocate for the objector and learned advocate for decree holder, I have framed issues at Exh.95. I have reproduced same. My findings with reasons thereon are as under :

Sr. No.	Issues	Findings
1]	Does objector prove his rights, title or interests on the decretal property ?	In the Negative.
1a]	Whether the registered sale deed dated 30.05.1996 executed by Judgment	In the Negative, especially sale dated

	Debtor No.2 in favour of the Objector is legal and valid sale deed ?	30.05.1996 is false, illegal and invalid.
2]	What order	As per final order.

REASONS

10] Objector Parasram Somaji Uikey has examined OW-1 Damodhar Parasram Uikey at exhibit 98 and OW- 2 Nafis Jaha Abid Hussain Sayyad at Exh. 122. Objector relied upon following documents;

Sr. No.	Documents	Exhibits
01)	Power of Attorney Deed in favour of his son Damodhar Parasram Uikey	87
02)	Index II of sale deed dated 30.05.1996	102
03)	Registered sale deed dated 30.05.1996 executed by J.D. No. 2 in his favour	144
04)	Map of the C.T.S. No. 204	103
05)	Copy of the Property Card of C.T.S. No. 204	104, 105
06)	Evidence closing pursis of Objector	123

11] In support of defence, Decree Holder did not adduce any oral evidence and relied upon following documents:

Sr. No.	Documents	Exhibits
01)	Written Statements of J.D. No. 1 and 2 in Old RCS No. 13/2001, New RCS No. 12/2009	133
02)	Written Statements of J.D. No. 3 in Old RCS No. 13/2001, New RCS No. 12/2009	134
03)	Copy of the Chaukashi Nondwahi dated 06.12.1978 of the Suit Property	141
04)	Copy of the Judgment and decree of this Court in Old RCS No. 13/2001, New RCS	138 & 143

	No. 12/2009 dated 23.02.2012	
05)	Copy of the Judgment and decree of Hon'ble Principal District Court in RCA No. 08/2012 dated 17.01.2018	139 &140
06)	Copy of the Judgment of Hon'ble Bombay High Court Bench at Nagpur in Second Appeal No. 239 of 2018	142

12] Heard Learned Advocate R. B. Khanke, appearing for the Objector and Learned Advocate V.K. Nyalewar, appearing for the Decree Holder. The Learned Advocate for Objector filed pursis of citations or decisions of Hon'ble Apex Court as well as Hon'ble High Courts at Exh. 135 and filed his written notes of arguments at Exh. 138. Whereas, Learned Advocate for Decree Holder filed decisions as per pursis Exh. 136 and his written notes of arguments at Exh. 140. In order to avoid repetition of the decisions relied by the parties, they will be placed on the appropriate places hereinafter.

13] For the purpose to decide the objection I have called the original Record in RCS No. 12/2009 decided on 23.02.2012 from Hon'ble District Court and compared the documents filed by the decree holder. So also, I have compared the Judgment and decree of this Court, Judgment and decree of Hon'ble Principal District Court and decision of the Hon'ble Bombay High Court in Second Appeal etc. from the CIS or the website of the Court.

Issue No.1 & 1a :-

14] The issue No. 1 and 1a are interconnected with each other therefore I am discussing both these issues together. Order-XXI, Rules 97-103 deals with resistance to delivery of possession to decree holders or auction purchasers. Where a decree holder or an auction

purchaser of immovable property is resisted or obstructed by any person in obtaining possession of such property, he may make an application to the court complaining of such resistance or obstruction (Rule-97). Rule-98 deals with Orders for adjudication. Where any person other than the judgment debtor is dispossessed of immovable property by the decree holder or auction purchaser, he may make an application to the Court complaining of such dispossession (Rule-99). Rule-101 deals with all questions to be determined including right, title or interest in the property arising between the parties to the proceeding on an application under Rule-97 or 99 or their representatives and relevant to the adjudication of the application shall be determined by the Court dealing with application and not by a separate suit and the Court shall be deemed to have jurisdiction to decide such questions.

15] In Periyammal Vs. Rajamani and Others, decided on 06.03.2025 reported Civil Appeal Nos. 3640-3642 of 2025 (Arising out of SLP (C) Nos. 8490-8492 of 2020), Hon'ble Supreme Court observed that a harmonious reading of section 47 with Order XXI Rule 101 implies that questions relating to right, title or interest in a decretal property must be related to the execution, discharge or satisfaction of the decree. Executing Court cannot adjudicate an issue that the judgment debtor ought to have raised during the adjudication of the original suit and only matters arising subsequent to the passing of the decree can be determined by an executing court as such adjudication may undermine the decree itself. An application filed under Section 47, if pertaining to resistance or obstruction in obtaining possession, can be treated as an application under Order XXI Rule 97 and adjudicated

under Rule 98. The executing court has a duty to consider the substance of the application and apply the relevant rule, even if the application is incorrectly labelled. Dispossession is not a prerequisite for entertaining an application under Order XXI Rule 97. The procedure under order 21 rule 97 and 101 is a specific procedure, and supersedes the general procedure of section 47.

16] Thus, it is the objector who is approached before this Court, resisted the execution, filed the objection and prayed to decide his right, title and interests upon his suit property. As per oral evidence of OW-1 at Exh.98 objector is his father, he is suffering from Paralysis, therefore he is unable to appear in the Court. Hence, he has filed notarized POA at Exh. 87. Learned Advocate for Decree holder argued that the original objector is absent and his POA holder is giving his oral evidence. Therefore, adverse inference may be drawn against him that he is not personally interested. Learned Advocate for objector argued that in view of the provisions of Power of Attorney Act the objector can act and adduce evidence on his behalf and prayed that whatever is the evidence of objector on behalf of his POA holder and other witnesses along with documents filed by them can be considered and adverse inference against objector may not be drawn. Considering that the original objector is suffering from Paralysis and that his POA holder son Damodhar Parasram Uikey is adducing oral evidence. It is not a fit case to draw adverse inference against the objector and the right title and interest of the objector can be scrutinized on the basis of oral and documentary evidence filed by him through another.

17] As per oral evidence of OW-1 Damodhar Uikey at Exh. 98 his father Parasram Uikey is the owner and possessor of the property out

of the CTS No. 204 admeasuring 178.56 Sq. Mtrs and construction thereon. Out of it, his father purchase 139.00 Sq. Mtrs Gaothan land from J.D. No. 2 Nafis Jaha Abid Husen Sayyad who was its owner and possessor who told his father that in the period of Diwali Festival of the Year 1980. She purchased the same from deceased Jayram Sakharam Mankar at the consideration of Rs. 85/- and by way of oral sale deed. So also, as per oral evidence of OW-1 at Exh. 98, J.D. No. 2 told them that as the valuation of the suit property was less than Rs. 100/- it was not necessary for her to get the registered sale deed from Jayram Mankar, however J.D.No. 2 told his father that on the date of oral sale, the possession of the J.D. No. 2 land admeasuring 139.00 Sq. Mtrs was given to his father. As per the evidence of OW-1 at Exh. 98, J.D. No.2 executed registered sale deed No. 478/1996 dated 30.05.1996 in favour of the objector Parasram Uikey. Index II of sale deed dated 30.05.1996 (Exh.102), registered sale deed dated 30.05.1996 executed by J.D. No. 2 in his favour Exh. 144, Map of the C.T.S. No. 204 Exh. 103, Copy of the Property Card of C.T.S. No. 204 Exh. 104 and 105 are filed on record on behalf of objector.

18] During cross-examination of OW-1 Damodhar Uikey told that he does not know where J.D. No. 2 is residing and he has not met with J.D. No. 2 for the purpose of objection. OW-1 admitted in cross-examination that at the northern side of the suit property, his previous house is situated and he is residing there since from last 15 years. During cross-examination OW-1 told that he does not know whether Jayram Mankar was the original holder of the C.T.S. No. 204. OW-1 admitted in cross-examination that he and his father objector Parasram do no know which documents were showing the ownership

of J.D. No. 2 prior to execution of sale deed dated 30.05.1996 and that they did not take search of it in Land Record Office, Tahsil Office, Talathi Office or Gram Panchayat. So also, OW-1 admitted in cross-examination that except the sale deed he has no evidence to show that the property in C.T.S. No. 204 is belonging to the objector as well as in the year 1978 Jayram Manakar was its holder and its area is 178.59 Sq. Mtrs. OW-1 denied that as the J.D. No. 2 was not having owner of the C.T.S. No. 204, the sale deed executed in favour of his father is false or illegal. He also admitted that after getting knowledge of the execution petition he did not try to meet with J.D. No. 2 Nafis Jaha.

19] Thus, whatever is the evidence of OW-1 Damodhar Uikey at Exh. 98 is that on the basis of registered sale deed dated 30.05.1996 his father purchased the suit property without taking search of the ownership of the J.D. No.2 with any government office including Land Record Office, Tahsil Office, Talathi Office or Gram Panchayat, etc. So also, as per oral evidence of OW-1, it was base of the objector that J.D. No. 2 told him that he purchased the property from Jayram Mankar in the Diwali Festival on oral sale and as the consideration amount of sale transaction was Rs. 85/-, less than 100/- it was not necessary for her to make the registered sale deed. Accordingly, they purchased the J.D. No. 2's property out of C.T.S. No. 204 vide the registered sale deed dated 30.05.1996.

20] As per evidence of OW-2 Nafis Jaha Abid Husen Sayyad at Exh. 122, she had sold out the plot at Ambedkar Ward Kurkheda to the objector Parasram and at present it is in possession of the objector Parasram. As per her oral evidence prior to 45 to 46 years she had purchased the plot from Jayram Mankar on payment of consideration

Rs. 85/-, as the value of the property was less than Rs. 100/- the registered sale deed was not made and on the day of oral purchase, she took possession of the plot. As per evidence of OW-2 Nafis Jaha vide sale deed in the year 1996, she sold out the property therein to the objector at consideration of Rs. 40,000/-. During cross-examination OW-2 Nafis Jaha, she stated that she is adducing evidence is in respect of sale transaction of Parasram Uikey. OW-2 Nafis Jaha who is J.D. No. 2, denied that decree holder Namdeo Mankar filed suit against her in respect of the suit or decretal property or she did not file the appeal against the decree passed in favour the decree holder. So also, OW-2 denied that she filed Second Appeal before the Hon'ble Bombay High Court Bench at Nagpur and Learned Advocate Bankar R/o. Bramhapuri was her advocate in the concern Regular Civil Suit. OW-2 Nafis Jaha admitted that Kacchha Vikri Patra i.e. the Rough Sale deed was not prepared and she had not given title documents of his oral purchase to objector Parasram. During cross-examination OW-2 Nafis Jaha admitted that she did no enclose the Makan Number documents to sale deed dated 30.05.1996 at Exh. 144 and she is not having any documents having House number or Makan No. 39. Later on, she stated that she is having such documents and admitted that Exh.144 is not in respect of C.T.S. No. 204.

21] Following are the Acts or list of Citations filed on behalf of the objector:

i] The Power of Attorney Act 1882 .

a] In the present objection the objector filed his POA Deed at Exh-87 in favour of his son Damodhar Parasram Uikey and he has adduced the oral and documentary evidence in support of the objection. As per the provisions of the Act, a POA Holder may act and adduce evidence on behalf of the executor. Learned advocate for Decree Holder argued

that original objector did not adduce his evidence and adverse inference may be drawn. It can be seen that what evidence is adduced on record by the objector and what is its quality. Suffice to say that POA Holder can adduce his evidence on the basis of the POA executed by the objector.

ii] Para No. 6 of the decision of Hon'ble Bombay High Court in Wasudeo S/o Jagoba Wabhitkar Versus Vilas S/o Tukaram Tonge 2006 (2) MhLJ 625

6. There is nothing to show that the certified photo copy is forged or fabricated. Apart from this, the defendant has produced Index No. 2 at Exhibit 63, which shows that Bholaram had executed a sale-deed of entire 5.96 acres of land in favour of defendant No. 3 on 31-12-1968 and that such a document was registered at the Sub-Registrar's office. This is a certified extract of a public document and establishes the correctness of certified photo copy of sale-deed Article D1. Apart from this, **the recitals in para 11 of the plaint would themselves show that the plaintiff knew that Bholaram had executed a sale-deed in respect of the entire 5.96 acres of land in favour of the defendant.**

b] In the aforementioned cited decision, the certified copy of sale deed alongwith Index II of the sale deed has produced by the defendant and the the recitals in Plaint para 11 of the plaint would themselves show that the plaintiff knew that Bholaram had executed a sale-deed in respect of the entire 5.96 acres. In the present objection the copy of the sale deed and Index II have been produced by the objector and it can be presumed that the sale deed is executed by the J.D.No.2 in favour of the objector. However, in the present case in hand there is question of fact whether the J.D.No.2 was having transferable interest in the sold property? Whether there was knowledge to the Decree Holder about this sale deed? Thus, the facts of the cited decision and present case are altogether difference. Hence I respectfully submit that the decision is not binding upon this Court. However, considering the copy of the registered sale deed and Index II are produced by the objector it can hardly presumed that the sale deed in respect of the property mentioned in it is executed in favor of the objector by the J.D.No.2. However, it is a question of fact and law Whether there was sellable and transferable interest to J.D. No.2 and whether objector proves the same?

iii] Some Portion of Para No.11 and some of the relevant Portion of

Para No. 13 in the decision of Pandurang Jivaji Apte Versus Ramchandra Gangadhar Ashtekar reported in AIR 1981 SC 2235 that :

11. The first contention raised on behalf of the appellant is that the High Court had no jurisdiction to reverse the concurrent finding of fact. This contention was raised before the High Court in Letters Patent appeal as well but the same was over-ruled on the ground that the courts below had approached the case from an erroneous view of law in as much as they failed to raise the necessary presumption against Apte and Bavdekar on account of their failure to appear before the court.

12. In our opinion the question of drawing an adverse inference against Apte and Bavdekar on account of their absence from the court would arise only when there was no other evidence on the record on the point in issue.

13. All these documents have been lost sight of by the High Court which has indeed exceeded its jurisdiction in reversing the finding on the assumption that the courts below had approached the case with a wrong view of law in not drawing an adverse inference against Apte and Bavdekar on their failure to appear in court when the question of loan due to Apte from the judgment-debtor and the sale of the properties for Rs. 46,000 has been amply proved by the evidence on the record. **The question of drawing an adverse inference against a party for his failure to appear in court would arise only when there is no evidence on the record.**

c] The ratio in the aforementioned cited decision is that the question of drawing an adverse inference against a party for his failure to appear in court would arise only when there is no evidence on the record. The facts in the decision are different than case in hand. However, in the present case objector has adduced oral and documentary evidence in support of his objection and decree holder has adduced his documentary evidence in support of his defence. Hence, I respectfully submit that the cited decision is not binding upon this Court.

iv] **Para No.11 & some portion of Para 12 of the decision of Hon'ble Apex Court in Zarif Ahmam And Ors Versus Farooq reported in AIR [SC] 1236**

11. Order VII Rule 3 of the Code of Civil Procedure, 1908 (for short "Code of Civil Procedure"), which pertains to the requirement of

description of immovable property, reads as under:

“Where the subject matter of the suit is immovable property: Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property, sufficient to identify it, and in case such property can be identified by boundaries in a record of settlement or survey, the plaint shall specify such boundaries or numbers”.

12. The object of the above provision is that the description of the property must be sufficient to identify it. The property can be identifiable by boundaries, or by number in a public record of settlement or survey. Even by plaint map showing the location of the disputed immovable property, it can be described

d] The aforementioned Para in the aforementioned decision is relied by the learned advocate for objector. There is question of fact whether the sale deed produced by the objector comprises the decretal property or property other than decretal property. Learned advocate for objector argued that in view of the provisions of Order VII Rule 3 of the Civil Procedure Code he has given the description of the property of the objector which is mentioned in the sale deed, objector does not know whether it is decretal property or other property and objector only knows he has acquired the property from the J.D.No.2 by way of purchase vide the sale deed. Suffice to say that in view of the provisions of Order VII Rule 3 of the Civil Procedure Code decree holder has given the description of the property in the sale deed and which is in the possession of the objector. Now it is question of fact whether the property in the sale deed, which is in the possession of the objector is decretal property or any other property? If it is decretal property, it is question before me whether J.D.NO.2 was having transferable or sellable rights, title and interest to execute the sale deed etc.

v] Some Portion of Para No. 3 in the decision of Ramaswamy Vs. M Lobo By LR's reorted in 2001 (10) SCC 176

3. It is not disputed that the sale deed is a registered document and therefore no oral evidence could be adduced to show that no title passed on to the respondent under the sale deed.

e] The aforementioned decision is passed by the Hon'ble Apex

Court. Hence it is binding upon this Court. In the aforementioned decision facts were that the Defendant-Appellant herein was the owner of the property in dispute. On 13th December, 1965 the Appellant transferred the said property in favour of the Plaintiff-Respondent by means of a registered sale deed dated 13th December, 1965, the Respondent, after having become the owner of the property, leased out the said premises on rent to the Appellant on the same date, i.e., 13th December, 1965. Defendant-Appellant committed default in payment of rent, and, therefore, respondent filed a suit for recovery of rent from the Appellant. In the said suit the Appellant, took plea that since the land was an agricultural land, the suit filed by the Respondent was not maintainable in the Civil Court and that the registered sale deed was in fact a security for the loan advanced by the Respondent to him. **The trial court dismissed the suit on the ground that the suit land was an agricultural land and further that the sale deed executed by the Appellant was in the nature of security for the loan transaction.** The appeal preferred by the Respondent was allowed by the first appellate Court and the suit was decreed.

f] The aforementioned cited decision also shows that the second appeal preferred by the Appellant was dismissed by the Hon'ble High Court. The question before Hon'ble Apex Court was of the maintainability of the suit or appeal. As the first appellate Court as well as the High Court have recorded concurrent finding of fact that what was sold to the Respondent was houses and not the land and further the houses were assessed to the House Tax. Hon'ble Apex Court observed that it being the finding of fact, it is not open to challenge before Hon'ble Apex Court. Learned Counsel then urged that the sale deed was in fact a security for the loan advanced by the Respondent to the Defendant-Appellant and, therefore, there is no relationship of landlord and tenant between the parties. This argument is noticed only to be rejected. It is not disputed that the sale deed is a registered document and therefore, no oral evidence could be adduced to show that no title passed on to the Respondent under the sale deed. Thus the facts in the decision are altogether different than the case in hand. Therefore, I respectfully submit that the aforementioned decision is not applicable to the present case.

vi] Some relevant Portions in Para No. 26, 28 & 29 of the decision in R V E Venkatachala Gounder Versus Arulmigu Viswesaraswami And V P Temple reported in 2003 (8) SCC 752

26. In the property tax register the appellant and prior to that his predecessors have been shown to be the owners. An entry in the municipal record is not evidence of title. The entry shows the person who was held liable to pay the rates and taxes to the municipality. The entry may also, depending on the scope of the provision contemplating such entry, constitute evidence of the person recorded being in possession of the property. Such entries spread over a number of years go to show that the person entered into the records was paying the tax relating to the property and was being acknowledged by the local authority as the person liable to pay the taxes. If the property belonged to the temple, there is no reason why the temple would not have taken steps for having its own name mutated into The municipal records and commencing payment of taxes or claimed exemption from payment of taxes if the charity was entitled under the law to exemption from payment of taxes. Temple has not been able to produce any evidence oral or documentary to prove its title to the property. Only because tenant attorned to the temple and started paying rent to the temple in 1969 or that the temple paid the property tax to the municipal committee after 1969 does not establish its title to the property in question. These documents are not of much evidentiary value as these documents came in existence after the dispute had arisen between the parties. In the absence of any other lawful claimant the appellant on the strength of the documents produced by was rightly held to be the owner by the Courts below the High Court.

28. **A fact is said to be 'proved' when, if considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists.** It is the evaluation of the result drawn by applicability of the rule, which makes the difference..... In the former a mere preponderance of probability, due regard being had to the burden of proof, is a sufficient basis of decision: While civil cases may be proved by a mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt."

.....

29. In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the Court that he, in law, is entitled to dispossess the defendant from his possession over the suit

property and for the possession to be restored with him. However, as held in A. Raghavamma and Anr. v. Chenchamma and Anr., [1964]2SCR933 , there is an essential distinction between burden of proof and onus of proof: burden of proof lies upon a person who has to prove the fact and which, never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiffs title.

30. In the present case, the trial Court and the first appellate Court have noted that the plaintiff has not been able to produce any deed of title directly lending support to his claim for title and at the same time the defendant too has no proof of his title much less even an insignia of title. Being a civil case, the plaintiff cannot be expected to prove his title beyond any reasonable doubt; a high degree of probability lending assurance of the availability of title with him would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting back the onus, the plaintiffs burden of proof can safely be deemed to have been discharged.

g] I have no dispute as to ratio of the aforementioned cited decision and legal principles therein like “A fact is said to be 'proved' when, if considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists, there is an essential distinction between burden of proof and onus of proof: burden of proof lies upon a person who has to prove the fact and which, never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence etc cited in the decision”. However, the facts in the cited decision are different than the case in the Hand. Therefore, I respectfully submit that the decision is not applicable in the present case.

vii] **Para No. 6, 8, 10, 11, 13 and 16 in Union of India Versus Ibrahim Uddin & Anr reported in 2013 AIR SCW 2752, 2013(4) ALJ 66**

6. Generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in

case such material evidence is withheld, the Court may draw adverse inference under Section 114(g) of the Evidence Act notwithstanding, that the onus of proof did not lie on such party and it was not called upon to produce the said evidence.

8. In *Kamma Otukunta Ram Naidu v. Chereddy Pedda Subba Reddy and Ors.* AIR 2003 SC 3342, this Court held that all the pros and cons must be examined before drawing an adverse inference against a party. In that case the issue had been, as to whether two persons had been travelling together in the vehicle and presumption had been drawn only on the basis that the bus tickets of both the persons were not produced. This Court held that presumption could not have been drawn if other larger evidence was shown to the contrary.....

10. In *Mahant Shri Srinivas Ramanuj Das v. Surjanarayan Das and Anr.* AIR 1967 SC 256, this Court held that mere withholding of documentary evidence by a party is not enough to draw adverse inference against him. The other party must ask the party in possession of such evidence to produce the same, and in case the party in possession does not produce it, adverse inference may be drawn:

It is true that the Defendant-respondent also did not call upon the Plaintiff-appellant to produce the documents whose existence was admitted by one or the other witness of the Plaintiff and that therefore, strictly speaking, no inference adverse to the Plaintiff can be drawn from his non-producing the list of documents. The Court may not be in a position to conclude from such omission that those documents would have directly established the case for the Respondent.....

11. In *Ramrati Kuer v. Dwarika Prasad Singh and Ors.* MANU/SC/0288/1966 : AIR 1967 SC 1134, this Court held:

It is true that Dwarika Prasad Singh said that his father used to keep accounts. But no attempt was made on behalf of the Appellant to ask the court to order Dwarika Prasad Singh to produce the accounts. An adverse inference could only have been drawn against the Plaintiffs-respondents if the Appellant had asked the court to order them to produce accounts and they had failed to produce them after admitting that Basekhi Singh used to keep accounts. But no such prayer was made to the court, and in the circumstances no adverse inference could be drawn from the non-production of accounts.

13. In *Mahendra L. Jain and Ors. v. Indore Development Authority and*

Ors., (2005) 1 SCC 639, this Court held that mere non-production of documents would not result in adverse inference. If a document was called for in the absence of any pleadings, the same was not relevant. An adverse inference need not necessarily be drawn only because it would be lawful to do so.

16. Thus, in view of the above, the law on the issue can be summarised to the effect that, issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot lose sight of the fact that burden of proof is on the party which makes a factual averment? The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents etc. as is required under Order XI Code of Civil Procedure. Conduct and diligence of the other party is also of paramount importance. Presumption or adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to produce the document and other side failed to comply with the court's order, the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary.

h] Thus, the aforementioned decision of Hon'ble Apex Court is a landmark decision in respect of the adverse inference when can be drawn and when can not be drawn. I respectfully submit that the ratio and the legal Principles therein are binding upon this Court. Learned advocate for Objector by relying this decision argued that as the objector has not examined and his POA OW-1 Damodhar is examined adverse inference may not be drawn against the objector for his own examination. So also, he argued that Decree holder did not adduce any evidence i.e. oral evidence and did not give opportunity to other side for his cross examination therefore adverse inference may be drawn. However, the present case is execution proceeding, the decree holder has produced the supporting documentary evidence supporting his defence pleaded in his say. By way of the oral and documentary

evidence of the objector and documentary evidence filed by the decree holder, the right, title and interests of the objector in the present objection are able to be decided without drawing inference against objector or decree holder.

viii] **Relevant Para No.22 and relevant Para No.23 in the decision of Hon'ble Apex Court in Annaya Kocha Shetty Dead Through LRs Versus Laxmibai Narayan Satose Since Deceased Through LRs & Ors reported in 2025 AIR [SC] 2083**

22. By looking at the deed, we have no hesitation in holding that the agreement is one for conducting the business of the first Defendant. We are excluding oral evidence from consideration as none of the exceptions is attracted.

23.....

.....

..... As noted earlier, Sections 91 and 92 are substantive provisions under the Evidence Act, 1872. Unless and until the case falls under one or the other exceptions enabling receipt of oral evidence on a written document, the court is precluded from entertaining oral evidence.

.....

i] I have gone through the aforementioned decision and I respectfully submit that the legal principle and ratio therein is binding. Learned advocate for objector argued that by virtue of the sale deed dated 30.05.1996 the objector became the owner and possessor of his property which was purchased from Judgment-debtor No.2 Nafisa who purchased it by way of oral sale from Jairam Mankar in the year 1980. However, in absence of the right, title, interest of ownership and without proof of the sellable rights of J.D. No.2 I can not believe that by virtue of the sale deed dated 30.05.1996 objector became owner of the property mentioned in sale deed in question. However, the facts in the decision are different than the instant case in hand. Hence, I respectfully submit that the decision is not helpful to the objector.

ix] **Relevant Para No. 16 in the decision of Hemant R Sapale Vs. Kaloolal Pyarelal Jain & Ors reported in 2013 (5) MhLJ 406**

16.The Appellate Bench noted that the tenant had not uttered even a word in examination-in-chief that he had gone to his native place at the

relevant time, but observed that in cross examination he denied the suggestion that the notice was validly served upon him adding that he was at his native place in the month of May and June. The Appellate bench held that: the fact of the matter, therefore, is that in cross examination the tenant establishes that he was at his native place when the notice is supposed to have been served upon him. This conclusion was thoroughly unwarranted because it was not that in the cross examination any suggestion was put to the witness that the witness was not at his native place. It was in fact suggested that the notice was duly served upon him. Therefore, the overzealous cross examination on behalf of the landlord should not have resulted in appellate Court holding that presumption stood rebutted by one stray sentence in the cross examination. The bench having noted that tenant had not even uttered a word in his examination-in-chief about his being away, should have seen that presumption which the trial Court had drawn was perfectly justified. So even on this count, the conclusions drawn by the Appellate Bench cannot be sustained.

j] The facts in the cited decision shows that after appearance of tenant the trial court of small causes the suit was decreed on ground of arrears of payment of rent by the tenant. Before the appellate bench appeal was preferred who held that even though the tenant already filed application for fixation of standard rent and paid the rent and rent was not due in this position appellate bench raised a presumption on cross examination of the tenant on behalf of the landlord. However, the facts in the decision are different than the case in hand. Therefore, I respectfully submit that the aforementioned case law is not applicable to the present case.

x] Relevant Para No.16 in the decision in Zelukhabai Ismail Abubakar Versus Miya Ahmed Mahomed Merchant reported in 1991 (1) BCR 595

16. Shri Vakil then contended that a mere suggestion in the cross-examination, which suggestion was denied by the plaintiffs, was no evidence at all and that the defendants must lead their own evidence. In support of this proposition, he relied upon the decision in the case of Binapani Roza v. Ravindra Sarkar, AIR1959Cal213 , where in para 7 of the judgment it has been observed that a suggestion in the cross-examination, which suggestion is denied, is no evidence at all. There can be no controversy on this proposition either.

k] In the cited decision, the defendants have led their own evidence and the Hon'ble Court was referring to the evidence of D.W. 1 Miya Merchant as also defendant No. 2, Ibrahim Abdul Kadar. These two witnesses have specifically deposed to the fact that the entire Eastern portion was initially in the possession of the first defendant as a tenant and pursuant to the assignment of 5-1-1961, it was the entire Eastern portion which was in possession of the second defendant. The facts in the Para No.16 and entire facts in the cited decision are different than case in hand. Therefore, I respectfully submit that it is not helpful to the objector.

xi] Para No.38 & 39 in the decision of Hon'ble Kerala High Court in Thapas Berman @ Tapas Versus the State of Kerala & one decision on 11.01.23 or 24 reported in 2024/KER/1821or in Criminal Appeal No.870 of 2020 dated 11.01.2023 or 11.01.2024 or Thapas Berman vs. State of Kerala (11.01.2024 - KERHC) : MANU/KE/0036/2024 wherein while deciding a criminal appeal, sentence and its evidence observed that -

38. We find that the variation in the evidence of PWs 1 to 3 regarding the exact time of occurrence are only due to normal errors of observation and normal errors of memory due to lapse of time and such discrepancies and errors will always be there and the same cannot be accepted as material discrepancies touching the core of the case.

39. In State of Uttar Pradesh vs. M.K. Anthony AIR 1983 SC 48], the Hon'ble Supreme Court held that minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole. It is well settled that when a material witness is examined at length it is possible for him to make some discrepancies and no true witness can possibly escape from making some discrepant details.

l] I respectfully submit that the legal principle enshrined in the cited decision that "Some discrepancies may bound to occur in the evidence." is binding upon this Court. However, the discrepancies should not be of such a nature so that it should loss the case of a party.

Xii] Relevant Para No.5 in Surya Ramchandra Naik And Ors Versus Suxila Tukaram Naique and Ors, reported in 2015 [1] MhLJ 310

5.

" 21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a)

(b)

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction.

m] The facts in the relevant Para shows that unless there are appropriate issues framed regarding title either specific or implied, the court can not go to investigate or examine or render a finding on a question of title . In the present objection necessary issues regarding right title interest of the objector and legality of the sale deed dated 30.05.1996 are framed at the instance of Parties well in advance. Therefore, the facts in the cited decision and present case in hand are totally different. Hence, I respectfully submit that the cited Para of the cited decision is not applicable to the present case.

xiii] Relevant Para No.5 in the decision of Shamlata Manohar Raut Versus Vishweshwar Tukaram Giripunje reported in 2008 (3) BCR 166

5. Both the judges have held that the document i.e. plaint can be read as it is a public document. Both seem to be under misconception. The certified copy of the plaint is not a public document. Hence, it requires proof. For proving such document, the original plaint should have been called in the court. That is not done, hence the certified copy of the plaint could not be said to be proved at all. The courts below, therefore, were not justified in putting reliance on this copy of the plaint.

n] Relevant Para No.5 relied by the learned advocate for objector shows that the certified copy of the plaint is not a public document unless it is verified from the original plaint. The above legal principle

is binding. However, for want same facts, I respectfully submit that the facts in the decision are not applicable to the present case.

xiv] **Para No.18 in the decision of V.K.Mishra and Another Versus The State of Uttarakhand and Another reported in 2008 (3) BCR 166**

18. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.

o] I have gone through the relevant Para aforementioned cited decision and it is the principle of law that how a contradiction shall be proved and admit the enshrined principle in it. However, the facts in the cited decision are different than the case in hand. Therefore, I respectfully submit that it is not applicable to the present case in hand.

xv] **Relevant Para No.21, 22, 23, 26,27 & 29 in the decision of Ishwar Bhai C Patel Versus Harihar Behera reported in**
21.. They observed:

Their lordships disapprove of such reasoning. The true object to be achieved by a Court of justice can only be furthered with propriety by the testimony of the party who personally knowing the whole circumstances of the case can dispel the suspicions attaching to it. The story can then be subjected in all its particulars to cross-examination. 22. This decision has since been relied upon practically by all the High Courts. The Lahore High Court in Kirpa Singh v. Ajaipal Singh and Ors. AIR (1930) Lah. 1, observed as under:

It is significant that while the plaintiffs put the defendant in the witness-box they themselves had not the courage to go into the witness-box. Plaintiffs were the best persons to give evidence as to the "interest" possessed by them in the institution and their failure to go into the witness-box must in the circumstances go strongly against them.

23. This decision was also relied upon by the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh (1930)32BOMLR924, which observed as under:

It is the bounden duty of a party personally knowing the facts and circumstances, to give evidence on his own behalf and to submit to cross-examination and his non-appearance as a witness would be the strongest possible circumstance which will go to discredit the truth of his case.

26. The Allahabad High Court in Arjun Singh v. Virender Nath and Anr. AIR1971 All29, held that:

the explanation of any admission or conduct on the part of a party must, if the party is alive and capable of giving evidence, come from him and the court would not imagine an explanation which a party himself has not chosen to give.

27. It was further observed that:

If such a party abstains from entering the witness box it must give rise to an inference adverse against him.

29. Applying the principles stated above to the instant case, it would be found that in the instant case also the appellant had abstained from the witness box and had not made any statement on oath in support of his pleading set out in the written statement. An adverse inference has, therefore, to be drawn against him. Since it was specifically stated by respondent No. 2 in his statement on oath that it was at the

instance of the appellant that he had issued the cheque on the account of respondent No. 1 in the Central Bank of India Ltd., Sambalpur Branch, and the appellant, admittedly, had encashed that cheque, an inference has to be drawn against the appellant that what he stated in the written statement was not correct.

p] I have gone through the relevant Paragraphs in aforementioned cited decision. Learned advocate for objector submitted that it is the bounden duty of a party personally knowing the facts and circumstances, to give evidence on his own behalf and to submit to cross-examination and his non-appearance as a witness would be the strongest possible circumstance which will go to discredit the truth of his case and that decree holder has not examined in the case. Therefore, he prayed to draw adverse inference against him. In the present case, Decree holder has not adduced his oral evidence and filed his documentary evidence proving that he has proved his title over the suit property in the decision of the suit and filed decisions and decrees of this Court, Judgment of Hon'ble District Court in First Appeal and Judgment of Hon'ble Bombay High Court in Second Appeal etc. The present proceeding is the decree and objection in it and documentary evidence can be filed on record. The facts in the decision are different than case in hand Therefore, I respectfully submit that the cited decision is not applicable to the present case. So also learned advocate filed some decisions or citations which show that if there is evidence available on record to prove the fact adverse inference may not be drawn.

22] Learned advocate for objector mainly argued that the decree is binding only upon the parties to the suit and purchaser who use to purchase the same during pendency of the suit. He also argued that however, in the present objection, objector has purchased the suit property prior to 5 years of the filing of the suit. Therefore, the decree is not binding upon him and it can not be executed upon him as he has acquired the property vide registered sale deed dated 30.05.1996 from the J.D.No.2 Nafis Jaha Abid Husen Sayyed.

23] Learned advocate for the decree holder relied upon following three decisions:

i] Kailashchandra Kedarmalji @ Kedarnath Agrawal Versus Kochaveedu Varchese Joseph reported in 2019 (1) MhLJ 662

ii] Veljiben Versus Kanaiyalal Purshottamdas Shah reported in 2017 (1) MhLJ 335

iii] Shivaji Bhausahab Bankar Versus Jijabai Prabhakar Alwane reported in 2016 (4) MhLJ 939

Learned advocate for decree holder has mainly argued that decree holder has proved his title in the suit, judgment and decree are passed by this Court to the effect that decree holder is landlord and J.D.No.1 & 2 were his tenants, directed them to deliver the possession of the rented suit property to the decree holder, Hon'ble District Court and Hon'ble Bombay High Court confirmed the decree of this Court. Decree holder has filed on record all the decisions and relevant documents etc. He also argued that already decree holder has proved his title and the objector has to prove that he has right, title interests which are superior than the decree holder. However, the sale deed executed by the J.D.No.2 dated 30.05.1996 is without sellable title and it is the contention of the objector that he became owner of the sale deed property is based on a false document, therefore it is invalid and illegal in the eye of law.

24] Now after considering the decisions cited by the parties, arguments advanced by them upon the cited decisions as well as on main aspects of the objection, it would be proper what is the evidence of OW-1 and OW-2 Nafis Jaha who is also J.D.No.2 in the present suit. It is the contention of decree holder that the property in registered sale deed dated 30.05.1996 at Exh. 144 is not the decretal property and it is other property other than it. As per objector, he is the owner and possessor of the property in Exh.144 and it was purchased by J.D. No.2 on the basis of oral sale deed in Diwali Festival of 1980 and she

told him that she paid consideration Rs. 85/-, it was not necessary to make the registered sale deed.

25] On perusal of copy of decree in RCS No. 12/2009 at Exh.143, the decretal property is the house property situated at Gram Panchayat Kurkheda, Dist- Gadchiroli bearing House No. 33 in the name of Defendant No. 2 Nafis jaha, a mud house in the tiles, roof comprising of four rooms, varandha, along with open land 52 x 48 feet which was led to J.D. No.2 was bounded as under:

At East- Way and then house of Sadashiv Uikey,
At West- House of one Hiraseth,
At North- Way and then House of one Sadashiv Uikey,
At South- House in possession of plaintiff/Decree Holder.

26] As per recitals in Copy of Sale deed Exh. 144, the OW-2 and J.D. No. 2 Nafis Jaha sold the property at Ambedkar Ward Kurkheda having open land of 50 feet East-West = 15.24 Mtrs and width 30 feet bounded as under:

At East- Road and thereafter house of one Sadashiv Uikey,
At West- House of one Hira Motwani,
At North- House of Objector Parasram Uikey,
At South- The Residential house belonging to the executor
Nafis Jaha i.e. J.D.No.2.

27] As per the suit and decree, the let out property to J.D. No. 2 by the decree holder was at the Northern side of the house of plaintiff/decree holder, then by presuming the Northern boundary as the House which was let to the J.D. No.2, everything is similar to that of the description of the suit property by replacing at the northern side objector Parasram Uikey in place of way and then Sadashi Uikey house in decree Exh. 143. Sale deed Exh-144 shows that one Sadashiv Somaji Uikey was the witness and presuming the same to be the East

and Northern boundary man he is the brother of the objector and he can give his northern house to objector. So also, the plot which alleged to belong by the objector is out of C.T.S. No. 204 and as per decree Exh-143 the decretal property comprises in it. Sum and substance J.D. No.2 Nafis Jaha has sold out the open Plot land admeasuring only 50 X 30 feet which is 139.00 Sq. Mtrs excluding her rented house mentioned in decree Exh. 143 or sold some portion out of the suit or decretal property. Thus, J.D.No.2 did not sold out her let or rented house vide sale deed Exh-144. OW-1 admitted in his cross examination that the present execution petition and objection is in respect of CTS No.204, his northern house in the objection or decretal property is included in it and again told that he does not know what is the CTS Number of his northern original house mentioned in the boundaries.

28] It is the contention of the objector that he is the owner and possessor of remaining area out of CTS No.204 admeasuring 178.56 Sq. Mtrs. side excluding the sale deed area 139 Sq.Mtrs. which is situated at the northern. So also as per record this northern boundary house is situated after the road, therefore it is separate from the decretal property and it is after the northern road of the decretal property. OW-1 Damodhar admitted in cross examination about it. It is pertinent to note here that already it is discussed in above Para that at the northern side in place of Sadashiv Somaji Uikey it might be possible that Objector Parasram Somaji Uikey was/ is residing. However, objector did not adduce any oral or documentary evidence in that behalf. Therefore, for want of proof by the objector it can not be said that he is the owner of rest of area excluding 139 Sq. Mtrs out of CTS No.204.

29] Now it would be proper to turn the evidence of OW-1 and OW-2 Nafis Jaha J.D.No.2 on the oral sale. It is the contention and oral evidence of the objector, OW-1 and J.D. No.2 that Jayram Mankar sold out the property in Diwali Festival of year 1980 for consideration of Rs.85/- and as the consideration was less than Rs. 100/- it was not necessary to register the sale deed.

30] As per provisions of Section 54 of the Transfer of Property Act, sale is the transfer of ownership in exchange for a price paid or promised or partly paid and partly promised. The sale of the immovable property of value of 100/- rupees and upwards can be made only by a registered instruments and in case of its value less than 100/- rupees such sale shall be made by a registered instrument or by delivery of the property. As per oral evidence of OW-1 Damodhar and J.D. No. 2 Nafis Jaha the consideration price was rupees 85/- and as the consideration was lesser she purchased it by oral sale by delivery of possession from him. However, the Section 54 of the Transfer of Property Act, expects the value of the immovable property material for registration and not the consideration. If the value of the property is equal to or more than Rs. 100/- then registered document is the must, delivery is sufficient for immovable property having lesser value than Rs.100/-. Consideration of the sale transaction is immaterial and for the purpose of determination of the value i.e. valuation is necessary to be made from the Department of concern Sub Registrar Office.

31] Even though, in cases in which consideration price of the sale transaction is lesser and valuation of the property in the Government is exceeding Rs.100/- the registration shall be made on the basis of the

Government price. If the Government price is lesser than the consideration, in such situation the consideration price is the value or valuation of immovable property or the transaction value for the purpose of registration. Sum and substance, valuation of the price is material and not the consideration for the purpose of registration or non-registration of the sale.

32] As per evidence of OW-1 Damodhar and J.D. No. 2 Nafis Jaha, consideration of the oral sale transaction was Rs. 85/-, However evidence of both these witnesses are silent upon Nafis Jaha did or did not sought the valuation of the property so that she can decide whether its registration was not necessary. So also, opponent or J.D. No. 2 failed to tell the exact date of the oral sale deed in the year 1980 or in whose presence the delivery of possession was made either by examining such witnesses or proving that such and such witnesses were present. So also, they failed to produce on record any memorandum of oral sale, any document showing that on the basis of oral sale entry of J.D. No. 2 is taken in their office. Thus, nothing is proved to prove the oral sale as expected under section 54 of the Transfer of Property Act and objector has failed to prove the same on the day during Diwali Festival of 1980 by Jayram Mankar in favour of J.D.No.2 Nafis Jaha Abid Hussain Sayyad.

33] As per provisions Section 55(1) of the Transfer of Property Act, the buyer is bound to produce all documents of the title, to answer the questions put to him by the buyer in respect of the property or title and it is the right of the buyer to get such documents either for inspection, etc. As per Section 6 of the Transfer of Property Act, the property of any kind may be transferred except the property

mentioned in sub Section (a) to (i) subject to condition that it should be transferable. Considering that J.D.No. 2 was selling the property in sale deed Exh.144, she must have her ownership upon it or her sellable title in it. Without sellable title she can not sale the property mentioned in it. However, it is the admission of OW-1 Damodhar in cross-examination that he and his father objector Parasram do not know which documents were showing the ownership of J.D. No. 2 prior to execution of sale deed dated 30.05.1996 and that they were not took search of it in Land Record Office, Tahsil Office, Talathi Office or Gram Panchayat. So also, OW-1 admitted in cross-examination that except the sale deed he has no evidence to show that the property in C.T.S. No. 204 is belonging to the objector and that in the year 1978 Jayram Manakar was its holder and its area is 178.59 Sq. Mtrs.vide EXh-141 Photocopy of Chaukashi Nondwahi.

34] Sale deed Exh-144 does not show that any title deed is enclosed to it so that can be scrutinized so as to decide whether she was having any sellable right, title or interest in it and on the basis of it she has transferred the ownership of the immovable property in it. Admittedly its consideration is Rs.40,000/-.

35] It is admitted by OW-1 in his cross examination at EXh-98 that in the year year 2015 objector prepared property cards Exh-104 & 105. On perusal of Property Cards at Exh-104 & 105 it is seen that name of objector Parasram Somaji Uikey is recorded on 30.5.2015 on the basis of M.E.No.208 in respect of the entry of the area in the words "AREA IN THE PROPERTY CARD IS INCLUDED IN THE WORDS ON THE BASIS OF THE ORDERS OF JAMABANDI AYUKT PUNE CIRCULAR DATED 16.02.2015 " However, there are no mutations on it showing

that any how in place of Jayram Mankar name of J.D.No.2 Nafis Jahan was inserted and thereafter name of objector Parasram was included on the basis of sale deed dated 30.05.1996. Be that it may be, it is not a title document of the objector and has not pleaded the same.

36] From perusal of written statements of J.D.No.1 & 2 in RCS 12/2009 at Exh-133 it is seen that they did not mention therein that any how on 30.05.1996 they sold the property to the objector or any other person, record in the present application shows that J.D.No.1 & 2 also who challenged the decree of this Court before the Hon'ble Principal District Court in R.C.A.No. 08/2012 decided on 17.01.2018 [Judgment and decree Exh-139 & 140] and before Hon'ble High Court, Bombay bench at Nagpur in Second Appeal bearing No.239 of 2018 decided on 28.06.2024 [Exh-142]. J.D.No.1 or J.D.No.2 Nafis Jaha was having opportunity to plead lastly it before the Hon'ble High Court Bench at Nagpur. However, they failed to do so. By way of the aforementioned Judgments and decrees of this Court, Judgment and decree of the Hon'ble Principal District Court in aforementioned Regular Civil Appeal and Judgment of the Hon'ble High Court Bombay Bench at Nagpur in Second Appeal, decree holder is adjudged as the landlord of the suit property and J.D.No.1 & 2 are adjudged as its tenants who are directed to hand over it to the decree holder within 3 months from the date of decree. Afterwards J.D.No.1, his legal heirs and J.D.No.2 are estopped from saying that the property was already sold on 30.05.2026. So also objector failed to prove ownership rights of J.D.No.2 Nafis Jaha or any of her sellable title thereto.

37] J.D.No.2 Nafis Jahan has estopped after decision of Hon'ble High Court, Bombay bench at Nagpur in Second Appeal bearing No.239 of

2018 decided on 28.06.2024 [Exh-142] which is the finality of the litigation between her and decree holder. Thereafter, she can not say that prior to it on 30.05.2026 she has sold the property in Sale deed Exh-144 which is the part and parcel of the decretal property and on which she has been adjudged by the competent court as tenant or the lessee. It is the contention of the Objector Parasram that he was not having knowledge of the litigation between decree holder and from Judgment debtor No.2 Nafis Jaha, he has purchased the property in sale deed Exh-144 on 30.05.2026. However, he admitted that his original house is situated at the northern side of the decretal property, then he must have knowledge of the litigation from 2001 till 2024. Without making the knowledge of the sale deed dated 30.05.2026 how it will learn either to the decree holder or any other person he has purchased it and he will not mutate the same in revenue or Land Records. Judgment debtor No.2 Nafis Jahan who was having knowledge of it, she could tell him so that he can join in the suit. Objector is successor in title of the J.D.No.2 Nafis Jaha on the basis of the alleged sale deed dated 30.05.1996, decree is binding upon J.D.No.2 then being her successor in title, he can not say that J.D. was owner of the suit property, she was having a transferrable right, title and interests in the property comprised in sale deed and decree is not binding upon him being binding only upon Parties to the proceeding. Thus, being the successor in title of J.D.No.2, the decree is also binding upon the objector.

38] So far as the contention of the objector that he has got possession and enjoyment since from sale deed dated 30.05.1996 is concerned, when J.D.No.2 Nafis Jaha was having possession of the

decretal property as that of the tenant for only to occupy it, how she could transfer him possession of the of the owner. Sum and substance as the possession of the decretal property of the J.D.No.1 & 2 is adjudged as that of the tenant, the objector can not say that he has got the possession of ownership from J.D.No.2 on the basis of sale deed dated 30.05.1996. As per provisions of Transfer of Property Act and as held by the Hon'ble Bombay High Court, Bench at Nagpur in Second Appeal No. 239 of 2018 decided on 28.06.2024 [Exh-142] that persons cannot transfer a property that they do not own or have the right to transfer, the objector can not get any legal right, title of the decretal property and interests therein through J.D.No.2 in absence of her sellable title being her successor in title by way of sale deed dated 30.05.1996. Therefore, objector has failed to prove that he is having rights, title and interests in the decretal property for want of proof of the oral sale and any sellable interests in the property. So also, it is the principle of Transfer of Property Act that a purchaser can not get a better title than that of his predecessor.

39] In view of my aforementioned discussion, I have already discussed that the Objector and J.D.No.2 failed to prove the oral sale deed between J.D.No.2 and she was having any sellable or transferable interest therein. Therefore, sale deed executed by J.D.No.2 Nafis Jaha in favour of the Objector dated 30.05.1996 without any rights, title and interests therein is false, illegal and invalid sale deed. For that purpose objector Parasram Somaji Uikey can apply before appropriate forum for his cheating and recovery of the consideration price Rs.40,000/-. Thus, considering my aforementioned discussion, it is proved that the objector failed to

prove his rights, title or interests on the decretal property as well as the registered sale deed dated 30.05.1996 executed by J.D.No.2 in favour of the objector is illegal and invalid sale deed. Hence my findings as to issue No.1 & 1A are in negative especially the registered sale deed executed by J.D.No.2 in favour of the objector dated 30.05.1996 is false, invalid and illegal .

Issue No.2:-

40] In view of my finding as to issue No. 1 and 1A, the objection is liable to be dismissed and Possession warrant needs to be issued in terms of the decree. In the present objection, the objector has failed only because he got executed the sale deed from J.D.No.2 without her sellable title. If the objector could purchase the decretal property from any of the strangers other than the parties in the previously decided suit i.e. from other than decree holder, judgment debtor or J.D.No.2 Nafis Jaha or only possess it previously, he could succeed in the objection. Now hardly objector can apply before appropriate forum for his cheating and recovery of the consideration price Rs.40,000/-.

41] Be that it may be, in the present execution petition, in spite of the decree holder has adjudged as the landlord of the decretal property, J.D.No.1 & J.D.No.2 Nafis Jaha are adjudged as his tenants and they are directed to hand over possession of the decretal property within 3 months from decree of this Court dated 23.02.2012. However, they contested the same before Hon'ble District Court in Regular Civil Appeal and before Hon'ble Bombay High Court Bench at Nagpur by way of Second Appeal to prolong the litigation in order to save them and not to get the decree holder the fruit of his decree. Therefore, it appears that with deliberate intention, especially

J.D.No.2 Nafis Jaha brought in picture to the objector and previously executed a false, illegal and invalid sale deed dated 30.05.1996 executed by her got filed in the objection in collusion with objector. She did not stop by filing objection through the objector, however, she adduced evidence in the objection saying that she had executed the sale deed prior to filing of the suit on 30.05.1996, she sold the property to the objector, transferred the possession of the property to the him, Decree holder did not file any suit against him, she did not file any First Appeal before Hon'ble District Court, Gadchiroli or did not file any Second Appeal before Hon'ble High Court Bench at Nagpur especially when she is contesting the present execution petition prior to adducing her evidence. Hence, objector, J.D.No.2 Nafis Jaha and his legal heirs especially J.D.No.1a are responsible to pay costs to the decree holder for filing the objection for prolonging the fruits of decree to the decree holder. Hence, in answer to issue No.2, I pass the following order:

ORDER

- 1) The Objection at Exh-79 is dismissed with costs.
- 2) Objector, J.D.No.2 Nafis Jaha and his legal heirs especially J.D.No.1a shall pay collective costs Rs.10,000/-(Ten Thousand Rupees Only) to the Decree Holder.
- 3) Decree be drawn up accordingly.
- 4) Execution Petition shall be proceeded further.

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R.D. No. 01/2013

Namdeo Vs. Abid + 04 ,(Order below Exh.79)

(Dictated and pronounced in open court.)

Place :- Kurkheda.
Date : 06.08.2026

(N. P. Deshpande)
Civil Judge Junior Division,
Kurkheda.