

|                                                                                   |                      |        |      |      |
|-----------------------------------------------------------------------------------|----------------------|--------|------|------|
| MHTH310016342025                                                                  | Date of institution  | 13     | 09   | 2013 |
|  | Date of Registration | 13     | 09   | 2013 |
|                                                                                   | Date of decision     | 24     | 07   | 2026 |
|                                                                                   | Duration             | 12 Yrs | 10 M | 11 D |

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,  
MIRA-BHAYANDAR COURT DIST. THANE.**

[ Presiding officer: Dr. R. K. Jangam ]

**Regular Civil Suit No. 1116/2025**

**(Old Regular Civil Suit No.706/2013)**

**Exhibit No.91**

The Plaintiff **Mr. Daresaheb Saheb Patel**  
Age 48, Occu : Business,  
Residing at : 203, Green View,  
A wing, Patel Complex, Post Mira,  
Tal. and Dist. Thane. .... Plaintiff

**Versus**

The Defendant **1) R.N.A. Corp. Limited,**  
A Company registered under the company Act  
Having office at R.N.A. Corporate Park,  
Kala Nagar, Bandra, (East), Mumbai-400051.  
Through its Director  
**Mr. Anilkumar Aggarwal**  
**2) Mr. Ramchandra Narayan Kini,**  
Age Adult, Occu : Business,  
**3) Smt. Anandibai Ramchandra Kini,**  
Age Adult, Occu : Household,  
**4) Mr. Rohan Ramchandra Kini,**  
Age Adult, Occu : Business,  
**5) Mr. Laxman Narayan Kini,**  
Age Adult, Occu : Business,  
**6) Smt. Sugandhabai Laxman Kini,**  
Age Adult, Occu : Business,  
**7) Smt. Ansuya Kesarinath Kini,**  
Age Adult, Occu : Household,

**8) Smt. Damayanti Mohan Bhandari,**

Age Adult, Occu : Household,

**9) Smt. Ranjana Parshuram Bhandari,**

Age Adult, Occu : Household,

**10) Smt. Parvatibai Harishchandra Kini,**

Age Adult, Occu : Household,

**11) Mr. Dayanand Harichandra Kini,**

Age Adult, Occu : Business,

**12) Smt. Pushpa Vilas Koli,**

Age Adult, Occu : Household,

**13) Mrs. Nalini Chandraprakash**

**@ Prabhakar Sharma**

Age Adult, Occu : Household,

**14) Miss. Bhagyashree Kailash Patil,**

Age Minor, Occu : Student,

**15) Miss Saraoj Kailash Patil,**

Age Minor, Occu : Student,

Defendant No.14 and 15 being minor  
through their guardian & Grand  
Mother **Smt. Parvatibai Harichandra Kini.**

All the defendant No.2 to 15 are  
R/at Ghodbunder Gautan, Near Shivaji  
Raje School, Village Ghodbunder,  
Tal. and Dist. Thane.

**16) Smt. Nanubai Bahurao Vaity,**

Age Adult, Occu : Household,

**17) Smt. Vithabai Chavathya Koli,**

Age Adult, Occu : Household,

**18) Smt. Yamuna Yeshwant Kili,**

Age Adult, Occu : Household,

Defendant No.16 to 18 are  
R/at Village Ghodbunder,  
Tal. and Dist. Thane.

**19) Mr. Digambar Dadaji Keni,**

Age Adult, Occu : Business,  
R/at Ghodbunder Village, House No.84,  
Near Shivaji Vidyalaya, Post Mira,  
Tal. and Dist. Thane.

**20) Smt. Barkubai Mahadev Koli,**

Age Adult, Occu : Household,  
R/at Sunder Lane, Marve Road,  
Koliwada, Malad, Mumbai.

**21) Dhanwanti Darmendra Wadkar,**

Age Adult, Occu : Household,

**22) Hemlata Nandkumar Koli,**

Age Adult, Occu : Household,

**23) Dinesh Narayan Koli,**

Age Adult, Occu : Household,

**24) Ajit Narayan Koli,**

Age Adult, Occu : Household,

Defendant No.21 to 24 all residing  
at Malvani Church, Malad, Mumbai.

**25) Jogesh Moreshwar Koli,**

Age Adult, Occu : Household,

**26) Nandkumar Moreshwar Koli,**

Age Adult, Occu : Household,

**27) Mr. Diraj Moreshwar Koli,**

Age Adult, Occu : Household,

Defendant No.25 to 27 all residing  
at Malvani Church, Malad, Mumbai. .... Defendants

**Appearance**

**Advocate for the Plaintiff : Adv. Sanjay Mhatre.**

**Advocate for the all Defendants : Adv. Upeksha Shejwal**

**J U D G M E N T**

**[ Delivered on 24<sup>rd</sup> July, 2026 ]**

This is a suit filed by the plaintiff against defendant No.1 to 27 for declaration of agreement dated 30.04.2011 registered under the

Registration No.4328/2011 and sale deed dated 30.04.2011 registered under Registration No.4329/2011 as void and restraining defendants for creating third party interest in view of the said agreements through injunction.

**02. The description of the suit property -**

The plaintiff stated that, Late Dadaji Narayan was the owner of the plot of land bearing Survey No.17 Hissa No.1 Admeasuring 40 Gunthas, Survey No.16 Hissa No.5 admeasuring 16.5 Gunthas & survey No.32 Hissa No.3 admeasuring 40 gunthas situated at Village Ghodbunder, Tal- & Dist. Thane (herein after referred to as the suit property). Late Dadaji had purchased the said property through registered sale deed dt.10/05/1948 bearing Registration No.361.

**03.** It is further submitted that, he married to Keshribai but had no issue from her. Hence married to Parvatibhai and had son Digambar i.e defendant No.19. The said properties were self acquired property of Dadaji and plaintiff's brothers and family members have no any right, title and interest in the suit property. After his death, Keshribai, Parvatibhai and defendant No.19 became his legal heirs vide Mutatation Entry No. 986. They are the owners of the suit property. With malafide intention and oblique motives defendant No.2 to 18 have entered their name in revenue record by fraud and misrepresentation. Therefore they have no right and interest with the suit property.

**04.** The plaintiff further submitted that, Late Dadaji had purchased the Survey No.16, Hissa No.5 from Mr. Krishnaji Mahadev

Joshi. Accordingly Mutation Entry No.313 was muted. Late Dadaji had also purchased the Survey No.32, Hissa No.3 from Mr. Balkrishna Budhaji Tare in 1960. Accordingly Mutation Entry No.559 was muted. Defendant No.19 is class one heir and defendant No.2 to 18 are class two heirs and hence defendants have no legal, rights, title and interest in the suit property. They have no right to challenge the probate granted. But in collusion with defendant No.19 defendants have got cancelled the said probate on the basis of which suit properties is sold to the plaintiff. All these properties are self acquired property and not hereditary property of Hindu Joint Family. The Hon'ble Civil Judge Senior Division Thane have issued the decree of specific performance and accordingly the said agreement dated 7/12/2012 was executed by Superintendent of the Hon'ble Civil Court as per the decree.

**05.** The plaintiff found that, in the revenue record of the suit property, defendant No.1 had illegally entered his name by mutation entry No.2240. Defendant No.1 had executed registered agreement of sale deed with defendant No.2 to 18. The said deed of conveyance has registered under Registration No.4328/2011 and 4329/2011 respectively. (herein after referred as Suit Agreement No.1 and 2). Therefore the said agreement executed between defendant No.1 and defendant No.2 to 18 be declared as null and void other wise it will cause prejudice to the right of the plaintiff.

**06.** The plaintiff further stated that, mutation entries made by defendant No.2 to 18 are illegal. They have made that entries after passing the decree of Hon'ble Court in Spl. C.S. No.850/2009. As per the decree said agreement prevail over defendants agreement for sale

dated 30/04/2011. Defendant No.1 has also entered his name illegally by way of Mutation Entry No.2240. The said Mutation entry is bad, illegal and contrary to law.

**07.** The plaintiff stated that, he is in the possession of the suit property since 17/10/2023 i.e. on the day of agreement for sale executed defendant No.19 in his favour. Hence subsequent agreement and conveyance deed between defendant No.1 and defendant No.2 to 18 are absolutely illegal. Therefore, the plaintiff had challenged the said mutation entry bearing No.2240 of revenue record. However, revenue officers refused to remove the said mutation entry on the basis of registered agreement and without decree.

**08.** The plaintiff stated that, the Civil Court has passed the decree of specific performance of agreement dt.17/10/2003 and as per decree the sale is executed through court in favour of the plaintiff. The plaintiff is the owner of the suit property. Defendant No.1 is trying to obstruct enjoyment of plaintiffs own property. Defendants are disturbing use and occupation of the suit property. Hence plaintiff seeks the relief of permanent injunction against defendant No.1 to 19, their attorney holders, executors, servants who are claiming through them be restrained from obstructing him from enjoyment of the suit property. The plaintiff has also prayed that, suit agreement date 30/04/2011 bearing registration No.4329/2011in respect of suit property be declared as null and void not binding on the plaintiff.

**09.** Defendant No.1 to 18 have filed written statement on 07/01/2014. The suit is proceed ex-party against defendant No.19.

Thereafter the suit was amended. However, defendants have failed to file additional say. Hence no additional written statement order is passed on 01/03/2017.

**10.** Defendant No.1 to 18 have resisted the plaint by filing written statement vide **(Exh.18)** on 07/01/2014. The suit is proceed ex-party against defendant No.19. Thereafter the suit was amended. However, defendants have failed to file additional say. Hence my Ld. Predecessor has passed no additional written statement order on 01/03/2017.

**11.** It is submitted that, defendant No.1 has purchased the suit property from defendant No.2 to 18 vide registered agreement to sale dated 30/04/2011 and Conveyance deed dated 30/04/2011 having documents number TNN4/04328/2011 and TNN4/04329/2011. Defendant No.2 to 18 have executed registered power of attorney in favour of nominees of defendant No.1 to deal with suit property.

**12.** The alleged agreement has been executed in favour of the plaintiff only under heading of development agreement. The said agreement dated 17/10/2003 is neither registered nor adequately stamped as per Bombay Stamp Fees Act, 1958. The alleged agreement is development agreement and an agreement for sale. As per the development agreement, the development rights in respect of suit property was given for construction of multi-storeyed buildings on the suit property. The conveyance of the suit property was to be granted in favour of the cooperative society of the flat purchasers in such multi storey building. The plaintiff has committed breach of terms of alleged

agreement and has not constructed any multi-storeyed buildings envisaged in the agreement.

**13.** The defendant submitted that, the suit property was the joint property of Mr. Narayan who dies intestate in 1957 leaving behind his widow Haulabai, son Mr. Dadaji, Mr. Harishchandra, Defendant No.2, 5, 16, 17 &18. Mr. Dadaji who died in 1964 has 1/5th undivided share in the suit property. Mr. Dadaji had no issue and died leaving behind wife Kesarbai. Dadaji had never given divorce to Kesaribai and Kesaribai had also not married again. Smt. Parvatibai was the second wife of Dadaji and gave birth to defendant No.19. Defendant No.19 is the illegitimate son of Dadaji. After the death of Mr. Harishchandra Kesarbai the suit property was divided into defendant No.2,5,10,11,12,13,14,15, 16, 17 &18 jointly.

**14.** After the death of said Dadaji defendant No.19 and Smt. Parvatibai Dadaji Kini filed the Regular Civil Suit No.360/1966 (First Suit) against defendant No.2,5,16,17,18 Smt. Haulabai Narayan Kini, Mr. Harishchandra Kini, & Smt. Kesaribai Narayan Kini for maintenance before CJSD Thane. The claim of Paravtibai was dismissed and maintenance amount of Rs.50/-pm was granted to defendant No.19. The said order never challenged.

**15.** It is submitted that, defendant No.19 has derived rights, interest and title on the basis of will dated 12/09/1995 executed by his mother Kesaribai Dadaji Kini and that the said will was probated and probate certificate was obtained by defendant No.19. Accordingly he inherited the suit property. (Second order) Defendant No.2 to 18 have

filed Miscellaneous Application No.203/2003 for cancellation of probate. Accordingly the said certificate was cancelled by the Civil Judge Senior Division Thane by order dated 5/10/2009.

**16.** Defendants stated that they were not aware of the proceedings of Special Civil Suit No.850/2009 and Darkhast No.68/2011. By playing fraud on the court, the plaintiff snatched Ex-party order on 05/03/2011 in Special Civil Suit No.850/2009 and consequent thereto appointment of Court Commissioner, order dated 17/02/2012 in Darkhast No.68/2011. The plaintiff successfully got the alleged conveyance executed in his favour in respect of the suit property and registered the same on 08/12/2012 by playing fraud and misrepresentation on the registering authority.

**17.** The mutation entry No.1518 was cancelled and name of defendant No.19 was deleted pursuant to order in Appeal No.56/2004 passed by Sub Divisional officer, Thane. The name of Kesaribai Dadaji Kini has been entered by Mutation Entry No. 1572 dated 22/05/2006. After her death her legal heir Narayan brought on record vide Entry No.3932 dated 11/02/2011.

**18.** Thereafter Suit No.360/1966 is filed by defendant No.19 and his mother Parvatibai Dadaji Kini against defendant No.2 to 18 for recovery of maintenance. In that suit the Hon'ble court has adjudicated that the immovable property was joint family property and it was not exclusive property of Dadaji Narayan Kini. The court also declared that, Parvatibai Dadaji Kini is illegal wife and Digambar Kini (defendant No.19) is illegitimate son. Being illegitimate son Mr.

Digambar Kini (defendant No.19) is incapable of transferring any right, title or interest in the suit property as alleged.

**19.** The decree dated 25/03/2011 in Suit No.850 of 2009 is not less than a fraud on the Hon'ble court in collusion of the plaintiff and defendant No.19 and consequent thereto the order of the Hon'ble Court in Drakhast No.68 of 2011 appointing court commissioner for execution of conveyance and registration of the same in favour of the plaintiff was also obtained by the plaintiff by throwing wool in the eyes of this Hon'ble court.

**20.** The defendant stated that, suit property in favour of defendant No.1 is registered on 21/05/2011, whereas alleged conveyance of the plaintiff is registered on 08/12/2012 i.e. almost one year and seven months after registration of documents and conveyance in favour of defendant No.1. As per Sec.48 of the Transfer of Property Act there is a priority of rights created by transfer in favour of a person, in whose favour the documents are registered prior in time.

**21.** The defendants submitted that, the plaintiff has challenged the conveyance deed of defendant No.1 which has been executed by the real owners. The defendant No.2 has paid total consideration of Rs.98,22,110/-. The plaintiff has challenged the said deed and asked for declaratory relief. The plaintiff has wrongly paid court fees. Hence the plaintiff is not entitled for the relief claimed.

**22.** Record reveals that, there is an order below **(Exh.1)**

stating that the issues were redrafted and additional issues i.e. issue No.4A, 4B and 4C were modified. However, the said order has not been signed by my predecessor. However, it is reflected in the Roznama of dated 18/06/2025. On perusal earlier issue it appears that issue No.4 includes issue No.4A to 4C.

**23.** The plaintiff has filed evidence close pursis vide **(Exh.67)** on 30/06/2022. Defendant failed to examined their evidence hence no evidence order is passed against them again. The plaintiff has given no further evidence pursis on the modified issued vide **(Exh.79)** on 18/06/2025. Defendants were absent hence no further evidence order on the modified issued vide **(Exh.1)** is passed on 27/06/2025.

**24.** Defendant No.20 to 27 have not appeared before the court and hence no cross examination order is passed against them. The Ld. Counsel of defendant has filed no instruction pursis vide **(Exh.59)** intimating about their decision of withdrawal of Vakalatanama due to lack of instructions. Despite of this defendants never turned up either personally or through advocate.

**25.** On rival pleadings of the parties, my learned predecessor has pleased to frame the following issues below **(Exh.26)**, upon which I have recorded my findings each of them with reasons as under-

| Sr. No. | Issues                                                                  | Findings |
|---------|-------------------------------------------------------------------------|----------|
| 1)      | Whether plaintiffs proves that he is having right in the suit property? | Yes.     |

| <b>Sr. No.</b> | <b>Issues</b>                                                                                                  | <b>Findings</b>                 |
|----------------|----------------------------------------------------------------------------------------------------------------|---------------------------------|
| 2)             | Whether plaintiffs proves that he is in possession of the suit property?                                       | Yes.                            |
| 3)             | Whether plaintiffs proves threats of dispossession from the suit property at the hands of defendant No.1 to19? | Yes.                            |
| 4)             | Whether the plaintiff is entitled for the relief as prayed ?                                                   | Yes.                            |
| 5)             | What order and decree?                                                                                         | The suit is decreed with costs. |

**26.** Before discussing the evidence on record, it is necessary to point out the jurisdiction of this Court and Judgment given by the Hon'ble Supreme Court in connection with this suit. During the trial, the Hon'ble High Court had granted stay to the proceedings of present matter as Civil Appeal No.(s). 827.828/2021 awaits decision of the Hon'ble Supreme Court and directed not to decide the matter till the final decision of Civil Appeal No.(s). 827.828/2021.

**27.** The defendant has produced on record the copy of application filed before NLCT and order of NLCAT along with the application dated 04/07/2025 vide **(Exh. 81)**.

**28.** Record reveals that, Bank of India filed an application under Sec.7 of Insolvency and Bankruptcy Code against RNA Corp.

Pvt. Ltd. (defendant No.1) before the NCLT, Mumbai Bench bearing No.CP(IB)-909/I&B/MB/2019. NCLT vide its order dated 26<sup>th</sup> november 2019 allowed the application for initiation of Corporate Insolvency Resolution Process (CIRP). Against the order initiating CIRP, the appellant herein, Anubhav Kumar Agarwal, filed an appeal before the NCLAT.

**29.** The said Company Appeal(AT) (Insolvency) No.1504 of 2019 has been rejected by NCLAT on 07/02/2020. The said rejection is challenged before the Hon'ble Supreme Court bearing CIVIL APPEAL No.827-828 of 2021 in Reportable judgment of Supreme Court having its number as **2026 INSC 201**.

**30.** In the reportable judgment in **2026 INSC 201** of the Hon'ble Supreme Court more than 08 orders of NCLAT were challenged for the proceedings for Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 against the Principle debtor as well as its Co-prorate guarantor or vice versa on the ground of maintainability.

**31.** The Ld. Counsel of the plaintiff has produced on record the judgment of the Hon'ble Supreme Court in Civil Appeal No(s). 827-828/202 vide (**Exh.89**). On its perusal it appears that, the Hon'ble Supreme Court has dismissed the appeal the Civil Appeal No(s). 827-828/202.

**32.** In view of the reportable judgment of the Hon'ble Supreme Court this court has heard the plaintiff and has passed the

order of no final argument on **(Exh.1)** against defendants.

33. **Suhrid Sing @ Sardool Singh Vs. Randhir Singh [LAWS(SC)-2010-3-44]** wherein Hon'ble Supreme Court has observed that, where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. For that the form is different and court fee is also different. If "A", the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If "B", who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if "B", a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint.

34. Similarly, **Dilip Khushalchand (Srisrimal) Jain and Ors. Vs. Hardik Deepakbhai Ramani and Ors. [2022 Supreme(Bom) 1743]** wherein the Hon'ble Bombay High Court has observed that, Section 6(iv)(ha) would be applicable only to the Plaintiff who is a party to the sale deed seeking declaration of avoidance of sale deed. It would not be applicable to the Plaintiffs who are not party to the

instrument seeking declaration of avoidance of sale deed. Such Plaintiff would be governed by Section 6(iv)(j) as it is not susceptible to monetary evaluation. In view of aforesaid judgment, it is cleared that plaintiff is not the party to alleged agreement. He sought declaration of alleged agreement and sale deed as void. He has properly valued the suit and this Court has jurisdiction to decide this matter.

**35.** In order to prove his case, the plaintiff has produced on record oral as well as documentary evidence. He examined himself on 01/04/2017 vide **(Exh.30)**. The following documentary evidence is filed by the plaintiff-

| <b>Sr. No.</b> | <b>Particulars</b>                                     | <b>Exhibits</b> |
|----------------|--------------------------------------------------------|-----------------|
| 1.             | 7/12 Extract of Survey No.17 Hissa No.1                | 34              |
| 2.             | 7/12 Extract of Survey No.16 Hissa No.5                | 35              |
| 3.             | 7/12 Extract of Survey No.32 Hissa No.3                | 36              |
| 4.             | Mutation Entry No.986                                  | 37              |
| 5.             | Mutation Entry No.559                                  | 38              |
| 6.             | Agreement dated 10/05/1948                             | 39              |
| 7.             | Deed of Conveyance Dated 07/12/2012                    | 40              |
| 8.             | Agreement of Sale 30/04/2011                           | 41              |
| 9.             | Agreement dated 30/04/2011                             | 42              |
| 10.            | Tax receipts (3 in numbers)                            | 43 to 45        |
| 11.            | Electric bill (6 in numbers)                           | 46 to 51        |
| 12.            | Water Connection order issued by MBMC dated 29/11/2007 | 52              |
| 13.            | Water Connection order issued by MBMC                  | 53              |

| <b>Sr. No.</b> | <b>Particulars</b>                                                              | <b>Exhibits</b> |
|----------------|---------------------------------------------------------------------------------|-----------------|
|                | dated 18/12/2007                                                                |                 |
| 14.            | Shop and Establishment license                                                  | 54              |
| 15.            | Certified copy of order passed in Case No.12/2014 by Tahsildar dated 24/07/2014 | 55              |
| 16.            | No objection certificate issued by MBMC                                         | 56              |

### **REASONING**

#### **As to issue No.1 to 4**

All these issues are interlinked with each other, hence in order to avoid repetition discussed together.

**36.** Defendant No.1 to 18 have filed written statement however, failed to step into the witness box and not deposed as per their claims. Therefore, in view of Section 114(g) of the Indian Evidence Act, defendant's case in their written statement is factually incorrect. Under such circumstance, the decision of the suit is entirely based upon the plaintiff's evidence. Therefore, plaintiffs evidence needs to be scrutinize properly.

**37.** The plaintiff Daresaheb Patel (**PW.1**) has examined himself vide (**Exh.30**). He deposed that, Dadaji Narayan Kini was the owner of the suit property i.e. Survey No.17, Hissa No.1 admeasuring 40 gunthas, Survey No.16, Hissa No.5 admeasuring 16.5 Gunthas & Survey No.32 Hissa No.3 adm 40 Gunthas situated at Ghodbandar, Tal- & Dist- Thane. Late Dadaji has purchased property i.e. Survey No.17 Hissa No.1 from Thakubai Dharma Bhoir through registered sale deed dated 10/05/1948. The plaintiff has filed the registered copy

of said deed on record vide **(Exh.39)**. On its perusal it appears that, Late Dadaji Kini has purchased aforesaid property from Thakubai Dharma Bhoir. Late Dadaji has purchased other property i.e. Survey No.16 Hissa No.5 from Krishnaji Mahadev Joshi and effect was given by mutation entry No.313. The remaining property i.e. Survey No.32, Hissa No.3 was purchased by Late Dadaji from Balkrishna Budhaji Tare in 1960 and accordingly mutation entry No.559 was mutated. The said mutation entry is filed on record vide **(Exh.38)**.

**38.** He further deposed that, the said properties are his self acquired properties. He filed three 7/12 extract of each survey number mentioned in the suit property vide **(Exh.34 to 36)**. On its perusal it appears that, it is in the name of Digamber Dadaji Kini (Defendant No.19)

**39.** It is came in the evidence of the plaintiff that, Dadaji was married to Kesaribai but have no issue from their marriage. Therefore, he married to Parvatibai and from the said marriage Digambar defendant No.19 was born. After the death of Dadaji, name of his wife Kesaribai, Pravatibai and his son Digambar (defendant No.19) were entered into revenue record by mutation entry No.986 vide **(Exh.37)**. On its perusal it appears that, after the death of Dadaji the name of Kesaribai, Paravatibai and Digamber were added in the revenue record.

**40.** The plaintiff deposed that, being a son Digamber (defendant No.19) alone is the heir of the suit property and his brothers and family members (i.e. Defendant No.2 to 18) have no any

legal right, title and interest in the suit property. The said properties are not ancestral properties. Defendant No.2 to 18 are class II heirs.

**41.** The evidence of the plaintiff shows that, Parvatibai and his son Digamar has filed the suit for maintenance bearing R.C.S. No.360/1966 against defendant No.2 to 18 before Civil Judge Senior Division, Thane. In the said judgment at Para No.25 it is observed in one line that, defendants have succeeded to this extent that immovable property is held to be of the ownership of the joint family. Therefore, Digambar is entitled for the maintenance. However that suit has not described specific legal right of ownership of each party. It is discussed only in view of maintenance issue.

**42.** The plaintiff has produced on record the sale dated 30/04/2011 executed between defendant No.1 stating that he is ready to purchase suit property from defendant No.2 to 18 for the price of Rs.48,22,110/- (Rupees Fourty Eight Lakh Twenty Two Thousand One Hundred Ten Only).

**43.** Similarly it is seen that, the plaintiff has filed the Special Civil Suit No.850/2009 before the Hon'ble Civil Judge Senior Division against defendant No.19 for specific performance of contract, declaration and injunction. He further deposed that, he has purchased the suit property from defendant No.19. The said sale deed is executed in his favour by the Court. He also wants to seek relief of permanent injunction for restraining defendants their agents, attorney holders, executors servants from acting upon and enter in the suit property as well as sought relief of uninterrupted, peaceful possession and its

enjoyment.

**44.** The said suit is decreed on 05/03/2011. As per the decree the plaintiff is directed to pay the balance of Rs.14,57,000/- to the defendant till 31/03/2011. In case the plaintiff fails to make payment to the defendant till aforesaid date in the event suit shall be treated to be dismissed.

**45.** Accordingly the said agreement dated 07/12/2012 was executed and the same has been executed by the Superintendent of Hon'ble Civil Court. The plaintiff has filed Deed of Conveyance vide **(Exh.40)**. On its perusal it appears that, through this deed of conveyance defendant No.19 through Shri R. J. Sonawane Asstt. Superintendent of Hon'ble Civil judge Senior Division, Thane as per the order passed below Exh.6 Dt.17/02/2012 in Spl. Darkhast No.68/2011 has executed the registered sale deed of the suit property in favour of the plaintiff for the consideration of Rs.48,15,800/- (Fourty Eight Fifteen Thousand Eight Hundred Only). The possession letter was also given to the plaintiff on 15/04/2005. The Plaintiff deposed that, form the date of execution of agreement i.e. from 17/10/2003 he is in the possession of the suit property.

**46.** It is the specific case of plaintiff that, he got his name entered in to revenue record. At that time he came to know that, defendant No.2 to 18 have entered into an agreement on 30/04/2011 with defendant No.1. He also found that revenue officers have also recorded their name in the revenue record bearing mutation entry No.2240 without verifying its record. With the said entry defendant

No.1 is trying to take forcible possession of the said entry. He challenged the said entry by RTS appeal.

**47.** The plaintiff has examined Akshay Digambar Kini (**PW.2**) as a witness the mental condition of the plaintiff is not proper. He deposed that suit properties are self acquired properties of his grandfather Late Dadaji. He married to Kesaribai and from the said wedlock they don't have any issue. Thereafter he married to second wife Parvatibai and from the said marriage his father Digambar (defendant No.19) was born. His father has executed sale deed in favour of the plaintiff in 17/10/2003. His father has taken some consideration from the said deed and handed over the possession of the suit property. For the execution of said sale deed his father has filed Special Civil Suit No.850/2011 and the court has granted decree of specific performance on 05/03/2011. As per the said decree the plaintiff has paid Rs.14,57,00/- in the court. He accepted the transaction between his father and the plaintiff. Defendant No.2 to 18 have no any legal right interest in the suit property. The evidence of the said witness is corroborate the allegations made in plaint. None of defendant appeared and have cross examined the plaintiff and his witnesses. Therefore evidence of the plaintiff became reliable and sufficient to establish his claim.

**48.** As per above discussion and scrutiny of record, no other inference can be drawn but it is clear that, Late Dadaji had purchased the suit property by agreement dated 10/05/1948. After his death, as per Hindu Succession Act, 1956 wife Kesaribai and illegitimate son Digambar are the class- I heirs and therefore they are the owner of the

suit property. After the death of Kesaribai son Digamber is the owner of the suit property.

**49.** In view of decree of Special Civil Suit No.850/2009 the plaintiff has purchased the suit property from defendant No.2 to 18 and he is the owner of suit property. He is in the possession of the suit property through Spl. Darkhast No.68/2011. The possession letter was also given to the plaintiff on 15/04/2005.

**50.** The Ramchandra Narayan Kini & others have filed suit against defendant No.19 bearing R.C.S. No.86/2014 for declaration and injunction. However the said suit is Order IX Rule 8 of the CPC.

**51.** It is pertinent to note that, the plaintiff has filed the certified copy of the agreement dated 10/05/1948, conveyance deed dated 30/4/2011 being registration number 4328/2011 and 4329/2011. Therefore, the said documents are duly proved. As the Hon'ble Supreme Court in many case has clarified that a registered sale deed does not mandatorily required attesting witnesses to prove the execution in the court. In support of his agreements he produced on record mutation extract, 7/12 extracts, property tax receipts, water connection receipts to prove his possession. Moreover, Tax receipts (3 in numbers) vide **(Exh. 43 to 45)**, Electric bill (6 in numbers) vide **(Exh.46 to 51)** and water connection bill order issued by MBMC vide **(Exh.52 and 53)** shows that all the documents are in the name of the plaintiff and he has deposited tax to the Corporation.

**52.** As per Sec.48 of the Transfer of Property Act agreement

executed by Dadaji had priority rights over defendant agreement. The cumulative effect of my finding in respect of all above material circumstances is that, the agreement dated 10/05/1948 prevails over the conveyance deed dated 30/4/2011 being registration number 4328/2011 and 4329/2011 executed between defendant No.1 and defendant No.2 to 18. Under such circumstance, the sale deed dated 30/04/2011 bearing registration number 8329/2011 and 8328/2011 are not subsisting and not enforceable by law.

**53.** The plaintiff deposed that, on 15/08/2023 he found that some people of defendants are trying to enter in to the suit property by threatening his workers and security guards. They entered into suit property and took measurements and demolish the structure with intention to construct new building. The said fact is not cross-examined by defendant. It shows that, there is threats of dispossession from the suit property at the hands of defendants.

**54.** As per Sec.101 of the Indian Evidence Act, 1872, burden of proof lies with one who asserts must prove those facts. On perusal of record, it appears that, plaintiff to that effect, has filed cogent and sufficient reliable evidence in respect of ownership in the suit property. Therefore, he is entitled for relief as claimed. Therefore, I have recorded my finding in the affirmative in respect of issues No. 1 to 4.

**As to issue No.5**

**55.** In view of discussion to issue No.1 to 5 it is proved that, the agreement dated 30.04.2011 registered under the Registration

No.4328/2011 and sale deed dated 30.04.2011 registered under Registration No.4329/2011 are not subsisting and not enforceable by law and hence declared as void. The suit claim is proved hence plaintiff is entitled to the relief of declaration and permanent injunction. If the registered instrument is cancelled, under section 31 (2) Specific Relief Act, 1963, it is necessary to sent a copy of decree to the officer in whose office the instrument has been so registered. Considering the nature of the controversy, it will be proper and also justified to direct the defendant No.1 to bear the entire costs of the suit. In the result, following order is passed.

**: ORDER:-**

1. Suit is decreed with costs against the defendant No.1.
2. It is hereby declared that, agreement dated 30.04.2011 registered under the Registration No.4328/2011 and sale deed dated 30.04.2011 registered under Registration No.4329/2011 executed in respect of suit property is declared as void.
3. It is hereby declared that, agreement dated 30.04.2011 registered under the Registration No.4328/2011 and sale deed dated 30.04.2011 registered under Registration No.4329/2011 executed in respect of suit property is not binding on the plaintiff.
4. The permanent injunction is granted against the defendant No.1 that he shall not obstruct the possession of plaintiff over the suit property and through his agent,

employees, power of attorneys and through any other person shall not disturb peaceful continuous uninterrupted enjoyment and possession of the plaintiff over the suit property.

5. Copy of the decree shall be send to the office of Sub-registrar, Thane. Sub-register, Thane shall take note on the copy of the agreement dated 30.04.2011 registered under the Registration No.4328/2011 and sale deed dated 30.04.2011 that it is declared as void.
6. Decree shall be drawn accordingly.

*(Dictated and pronounced in the open Court)*

Date: 24.07.2026  
Mira-Bhayandar

(Dr. R. K. Jangam)  
Civil Judge Junior Division,  
Mira-Bhayandar.

I affirm that the contents of this PDF file Order/Judgment are same word to word as per the original Order/Judgment.

- a) Name of Stenographer : Y. B.Karad
- b) Court : C.J.J.D. and J.M.F.C, Mira-Bhayandar.
- c) Date : 24.07.2026
- d) Date of order/judgment signed by : 24.07.2026  
presiding officer.
- e) Judgment/Order uploaded on : 24.07.2026