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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 283 OF 2016
WITH
CIVIL APPLICATION NO. 539 OF 2016

Shri Baban Jijaba Masalkar ... Appellant

Vs.

Mr. Babu Kondiba Masalkar ... Respondents

Mr. Onkar Gawade i/b. M/s. Jaydeep Deo for the Appellant.

Mr. S. R. Nargolkar a/w. Mr. S. S. Nargolkar for Respondent
No. 2.

CORAM : GAURI GODSE, J.

DATE : 27th APRIL 2026

ORDER :

Second Appeal No. 283 of 2016

1. The second appeal is admitted on the following
substantial question of law :

(a) Whether the transaction dated 4th August 1974 is an
agreement to sell or was executed by the plaintiff for purpose
of collateral security for repayment of hand loan of Rs.
8000/-?

(b) Whether the defendant can be said to be ready and
willing to perform his part of the contract when there is no

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proof of payment of the entire amount of Rs.8000/- as agreed under the agreement dated 4th August 1974 ?

(c) Whether the defendants can avail protection of possession under the provisions of Section 53A of Transfer of Property Act 1882, if they were not ready and willing to perform their part of the contract ?

(d) Whether in the light of the fact that the alleged agreement to sell dated 4th August 1974 was per say invalid for want of permission of Collector as required under Maharashtra Resettlement of Project Displaced Person Act, 1976 the respondents can protect their possession over the suit property under the provisions of Section 53A of Transfer of Property Act, 1882 ?

(e) Whether the defendant had the right to claim protection under Section 53-A of the Transfer of Property Act, even if the defendant just kept quiet and remained passive without taking effective steps to convey his willingness ?

2. Notice is waived on behalf of respondent no. 2.

Civil Application No. 539 of 2016

3. Issue notice returnable on 17th June 2026.

4. Learned counsel appearing for respondent no. 2 submits that the second appeal would not be maintainable as the appellant has transferred all the right, title and interest in September 2025 by executing registered sale deed. Learned counsel for respondent no. 2 is at liberty to file affidavit in reply. Objection, if any, on the maintainability of the second appeal is kept open.

5. Learned counsel for respondent no. 2 submits that respondent no. 1 has expired. He submits that he shall intimate the date of death to the learned advocate for the appellant. Learned advocate for the appellant shall take appropriate steps.

6. List the interim application for hearing on 17th June 2026.

[GAURI GODSE, J.]