

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 288 OF 2014
ALONGWITH

CIVIL APPLICATION NO. 729 OF 2014

Shri. Babasaheb Dattatraya Galinde
Age : 52 years, Occ : Business,
R/at : Khitik Galli, Kasba Galli,
Baramati, District : Pune

.....Appellant
(Original Respondent)

V/s.

1. Smt. Gulab Chandrakant Bendre
Age : 59 years, Occ : Household
R/at : 20/21, Yashashri Building,
Balajinagar, Pune-411 043.

2. Smt. Surekha Madhukar Lasure,
Age : 52 years, Occ : Household,
R/at : Topewadi, Near New Canal
Hadapsar, Pune-411 028

3. Smt. Meena Yashwant Ghotne,
Age : 44 years, Occ : Household,
R/at : Shubhalabh Society,
Plot No. 59/120, Modern Colony,
Shivtirtha Nagar, Paud Road,
Kothrud, Pune-411 038.

....Respondents
(Original Appellants)

* * * *

Mr. Sudhir V. Sadavarte, Advocate for the appellant.

Mr. V.B. Kondedeshmukh, Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 4th April, 2019.

JUDGMENT :

1. Heard learned Counsel for the parties.
2. Appeal is admitted on the following substantial questions of law :

“(a). Whether suit was barred by limitation ?

(b) Whether the Appellate Court was justified in decreeing the suit, by ignoring the evidence on record and in absence of pleadings in terms of Order 6 Rule 4 of the Code of Civil Procedure.”

3. With the consent of the parties, Appeal is taken for final hearing at the admission stage.
4. By this Second Appeal, the defendants, in the Regular Civil Suit are challenging the judgment and decree passed by the Ad-Hoc District Judge-I, Baramati dated 13th

March, 2014 in Civil Appeal No.85 of 2011.

5. The facts of the case in brief are that, the sisters instituted a suit for declaration that the deed of relinquishment dated 16th September, 2000 executed by them in favour of their brother, who is the defendant in the suit, is null and void on the ground that it was obtained on misrepresentation and fraud.

6. The learned trial Judge dismissed the suit on two counts; first is, that the suit was barred by limitation in terms of Article 56 of the Limitation Act, which says that the suit to declare the forgery of an instrument executed or registered, the period of limitation is three years from issuance or registration becomes known to the plaintiff. Admittedly, the deed of relinquishment was registered on 16th September, 2000 whereas the suit was instituted on 26th August, 2005 which was beyond the period of limitation. Thus, on this count, the finding recorded by the learned Appellate Court is incorrect and hereby it is set aside.

7. That in all cases in which the party pleading,

relies on misrepresentation, fraud, breach of trust, the party is obliged to plead the material particulars in accordance with the provisions of Order VI Rule IV of the Civil Procedure Code. In the case on hand, such particulars are absent in the pleadings.

8. The learned trial Court, on appreciation, found the evidence of plaintiff no.1 was not reliable. In the case on hand, plaintiffs had executed the deed of relinquishment and registered it. There is a presumption that a registered document is validly executed, therefore, prima-facie would be valid in law. The plaintiffs have not rebutted the presumption of its correctness which is attached to subject registered deed of relinquishment. Plaintiffs' case that, the defendant, their brother had obtained their signatures on blank paper on some other pretext, a fact in issue has not been proved.

9. The Appellate Court, however, by cryptic judgment and order set aside the decree of the trial Court which is contrary to law and the evidence on record.

10. Thus, after going through the judgments of the

Courts below, the Appeal is allowed and the impugned decree is set aside and questions of law are answered accordingly. In the result, the suit stands dismissed. The Appeal is disposed of accordingly.

11. With disposal of Appeal, Civil Application No.729 of 2014 does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)