

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR**

**Second Appeal No.262 of 2018**

Rahul S/o Late Baliram Borkar and others,

**Versus**

Ramchandra s/o Late Tukaram Borkar (Dead) through LR's Smt. Vimal  
Lonare and others.

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

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Court's or Judge's Order

Shri D.V. Mahajan, Advocate for appellants.

Shri S.S. Ghate, Advocate for respondents.

**CORAM : ANIL S. KILOR, J.**

**DATED : 26 NOVEMBER 2021**

This is an appeal arising out of concurrent findings recorded by both the Courts below that the counter claim filed by the appellant claiming declaration that the sale-deed in question i.e. sale-deed dated 17/06/1980, executed by their mother is an outcome of fraud.

2. I have heard the learned Counsel for the respective parties.

3. This Court, while issuing notices in this appeal on 06/07/2018, has framed the following substantial question of law-

“When it is the case of original defendants that the sale-deed dated 17/06/1980 was executed by their mother when they were minors, whether the rejection of their counter claim as being barred by limitation, is in accordance with law?”

4. Shri Mahajan, learned Counsel for the appellants submits that when the sale deed was executed on 17/06/1980, the appellants were minor and they had no knowledge about the execution of the sale-deed. They got this knowledge first time after receiving the suit summons in the present case in the year 2009 and therefore, immediately counter claim, seeking declaration that the sale-deed executed by mother of the appellants dated 17/06/1980 is an outcome of fraud, was sought.

5. He submits that the above referred case of the defendant in counter claim had not been considered by the both Courts below in right perspective and committed error in holding

that the counter claim filed by the appellants was time barred.

6. Per contra, learned Counsel Shri Ghate appearing for legal heirs of respondent submits that point of limitation is a mixed question of fact and law. The defendants except making pleadings in the counter claim, have not brought any evidence on record in support of their case.

7. He has pointed out that on the date of sale-deed the appellant No.1 was 16 years old and he became major in the year 1982 and from 1982 till 2009 i.e. the year when counter claim was filed, nothing has been done by the appellant No.1. He further submits that mere making pleading that the appellants got knowledge first time in the year 2009 is not sufficient.

8. To consider the rival contentions of the parties, I have gone through the record and perused the judgments and decree passed by both the Courts below.

9. There is no dispute that the sale-deed was executed on 17/06/1980 and the declaration that the said sale-deed which was executed by the mother of the appellants is an outcome of fraud, was sought first time in the suit filed by the plaintiffs for partition, possession and permanent injunction in the year 2009.

10. There is no dispute that on the date of sale-deed in question, the appellant No.1 was 16 years old whereas appellant No.2 was 12 years old and appellant No.3 was 6 years old. As such the appellant No.1 became major in the year 1982, the appellant No.2 in the year 1986 whereas appellant No. 3 in the year 1992. None of the appellants have taken any steps in this matter to seek declaration as sought in the counter claim within prescribed period of limitation.

11. The learned Counsel for the appellant has failed to point out any oral evidence led by the defendant in support of their case that they

had no knowledge about the sale-deed in question and first time they got the knowledge in the year 2009. In absence of any such evidence, oral as well as documentary available on record, both the Courts have rightly held against the defendant and rejected the counter claim of the defendant in accordance with law.

12. In that view of the matter, I do not find any merit in the present appeal and accordingly I have answered the substantial question of law in the above terms.

13. The appeal is dismissed no order as to costs.

**[ANIL S. KILOR, J.]**