

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.603 OF 2022
WITH CA/1754/2022 IN WP/603/2022**

Nidhi Nitin Kabra]
Age : 25 Years, Occu. : Student,]
Resi. Current – Pune.]
Permanent - 10, Audumber Bungalow,]
Ring road, Jalgaon.]

... Petitioner.
(Orig. Plaintiff)

Versus

1. Manisha Babulal Mantri]
Age : 45 Years, Occu. : Household,]
Resi. Audumber Bungalow,]
Ring Road, Jalgaon,]
Current Resi. Badnapur, Jalna.]
2. Neha Nitin Kabra,]
Age : 29 Years, Occu. Student,]
Resi. 10, Audumber Bungalow,]
Ring Road, Jalgaon.]
3. Ajinkya Nitin Kabra]
Age : 20 Years, Occu. : Student,]
Resi. C/o Nitin Pradipji Mantri,]
Dwarka Bangla, Mandai Road,]
Opp. Patrakar Bhavan, Beed.]
4. Dr. Mamta Mahendra Kabra]
Age : 54, Occu. Doctor,]
R/o 10A, Shivaji Chowk,]
in front of District Court,]
Jalgaon, Dist. Jalgaon.]
5. Vimalatai Narayandas Kabra]
Died Through LR's.]
Age : 65 Years, Occu. : Nil,]
Resi. R/o 10/A, Shivaji Chowk,]
Jilha Peth, Jalgaon.]

- 5A. Vinay Narayan Kabra,]
 Age : 58 Years, Occu. : Business,]
 R/o Kabra Medical, Navipeth,]
 Jalgaon.]
- 5B. Vanita Rampal Chandak,]
 Age : 60 Years, Occu. Household,]
 R/o Building No. O, Flat No. 202/3,]
 Near Pink memory City Pride,]
 Kothrud, Pune – 411 038.]
- 5C. Mahendra Narayandas Kabra]
 Age : Major, Occu. Doctor,]
 R/o Court Chowk, Opp. Shivrith,]
 Near J. T. Chamber, Jalgaon.]
6. Dr. Pashant Subhash Somani]
 Age : 40 years, Occu. Doctor,]
7. Dr. Rachna Prashant Somani,]
 Age : 36 Years, Occu. Doctor,]
- Respondent Nos.6 and 7 Resi.]
 Sarvamangal Hospital,]
 13B, Vivekanand Nagar, Swantantrya]
 Chowk, Jalgaon.]
8. ICICI Bank,]
 Through its Manager,]
 Thake Colony, Jalgaon.]

... Respondents
 (Orig. Defendants)

...

Advocate for Petitioner : Mr. P. R. Katneshwarkar
 Advocate for Respondent Nos.1 to 3 : Mr. A. A. Fulpagar
 Advocate for Respondent No.4 : Mrs. Rashmi S. Kulkarni.
 Advocate for Respondent Nos.6 and 7 : Mr. B. A. Darak

...

WITH

**WRIT PETITION NO. 704 OF 2022
WITH CA/1623/2022 IN WP/704/2022**

Ajinkya Nitin Kabra]
Age : 20 Years, Occu. : Student,]
Resi. C/o Nitin Pradipji Mantri,]
Dwarka Bangla, Mandai Road,]
Opp. Patrakar Bhavan, Beed.]

... Petitioner.
(Orig. Def. No.3)

Versus

1. Nidhi Nitin Kabra]
Age : 20 Years, Occu. : Business,]
Resi. Audumber Bunglow,]
Ring Road, Jalgaon.]
2. Manisha Babulal Mantri]
Age : 45 Years, Occu. : Household,]
Resi. Audumbar Bunglow,]
Ring Road, Jalgaon,]
Current Resi. Badnapur, Jalna.]
3. Neha Nitin Kabra,]
Age : 24 Years, Occu. Student,]
Resi. Audumber Bunglow,]
Ring Road, Jalgaon.]
4. Dr. Mamta Mahendra Kabra]
Age : 54, Occu. Doctor,]
R/o 10A, Shivaji Chowk,]
in front of District Court, Jilha Peth,]
Jalgaon, Dist. Jalgaon.]
5. Vimlatai Narayandas Kabra]
Died Through LR's.]
Age : 65 Years, Occu. : Nil,]
Resi. R/o 10/A, Shivaji Chowk,]
Jilha Peth, Jalgaon.]

5A. Vinay Narayan Kabra,]
 Age : 58 Years, Occu. : Business,]
 R/o Kabra Medical, Navipeth,]
 Jalgaon.]

5B. Vanita Rampal Chandak,]
 Age : 60 Years, Occu. Household,]
 R/o Building No. O, Flat No. 202/3,]
 Near Pink memory City Pride,]
 Kothrud, Pune – 411 038.]

5C. Mahendra Narayandas Kabra]
 Age : Major, Occu. Doctor,]
 R/o Court Chowk, Opp. Shivtirth,]
 Near J. T. Chamber, Jalgaon.]

... Respondents
 (Resp. No.1 – Orig Plaintiff;
 2,3,4,5, Orig. Defendants)

...

Advocate for Petitioner : Mr. Rahil R. Kazi
 Advocate for Respondent Nos.1 to 3 : Mr. A. A. Fulpagar
 Advocate for Respondent No.4 : Mrs. Rashmi S. Kulkarni.

...

WITH

WRIT PETITION NO. 672 OF 2022
WITH CA/1633/2022 IN WP/672/2022

Ajinkya Nitin Kabra]
 Age : 20 Years, Occu. : Student,]
 Resi. C/o Nitin Pradipji Mantri,]
 Dwarka Bangla, Mandai Road,]
 Opp. Patrakar Bhavan, Beed.]

... Petitioner.
 (Orig. Def. No.5)

Versus

1. Manisha Nitin Kabra]
 Age : 54 Years, Occu. : Nil,]
 Resi. Audumbar Bunglow,]
 Ring Road, Jalgaon,]
 Current Add. Badnapur, Jalna.]

2. Dr. Saw Mamta w/o Mahendra Kabra]
Age : 50, Occu. Medical Practise]
R/o 10/A, Shivaji Chowk,]
Jilha Peth, Jalgaon.]
3. Smt. Vimlatai W/o Narayandas Kabra]
Died Through LR's.]
Age : 65 Years, Occu. : Nil,]
Resi. R/o 10/A, Shivaji Chowk,]
Jilha Peth, Jalgaon.]
- 3A. Vinay Narayan Kabra,]
Age : 58 Years, Occu. : Business,]
R/o Kabra Medical, Navipeth,]
Jalgaon.]
- 3B. Vanita Rampal Chandak,]
Age : 60 Years, Occu. Household,]
R/o Building No.O, Flat No. 202/3,]
Near Pink Memory City Pride,]
Kothrud, Pune – 411 038.]
- 3C. Mahendra Narayandas Kabra]
Age : Major, Occu. Doctor,]
R/o Court Chowk, Opp. Shivrith,]
Near J. T. Chamber, Jalgaon.]
4. Neha Nitin Kabra,]
Age : 30 Years, Occu. Student,]
Resi. Audumber Bunglow,]
Ring Road, Jalgaon.]
5. Ms. Nidhi Nitin Kabra]
Age : 26 Years, Occu. : Student,]
Resi. Audumber Bunglow,]
Ring road, Jalgaon.]
6. Dr. Pashant Subhash Somani]
Age : 48 years, Occu. Doctor,]

7. Dr. Rachna Prashant Somani,]
 Age : 44 Years, Occu. Doctor,]
 Both R/o Sarvamangal Hospital,]
 13B, Vivekanand Nagar, Swantantrya]
 Chowk, Jalgaon.]

... Respondents
 (Resp. No.1 – Orig Plaintiff;
 2,3,4,5,6&7 Orig. Defendants)

...

Advocate for Petitioner : Mr. Rahil R.Kazi
 Advocate for Respondent Nos.1, 4 and 5 : Mr. A. A. Fulpagar
 Advocate for Respondent No.2 : Mrs. Rashmi S. Kulkarni
 Advocate for Respondent Nos. 6 and 7 : Mr. B. A. Darak

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CORAM : MANGESH S. PATIL, J.

RESERVED ON : 15 JULY 2022

PRONOUNCED ON : 02 AUGUST 2022

JUDGMENT :

. Heard. Rule. Rule is made returnable forthwith. Learned advocate Mr.Fulpagar, learned advocate Mrs. Rashmi Kulkarni and learned advocate Mr. Darak waives service on behalf of respective respondents. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. Though all these three petitions arise out of separate proceedings and even though the parties are impugning multiple orders passed by the lower court in different proceedings on several applications, since the parties as also the dispute is the same, I propose to decide these petitions together to obviate repetition of facts.

3. In order to understand the matter in controversy, it would be apt to recapitulate the complex facts.

4. One Nitin Kabra who was a practising advocate met with an accidental death in the year 2005, leaving behind widow Manisha and three issues, Neha, Nidhi and Ajinkya. He also left behind his parents Vimalatai and Narayandas, his brother Mahendra and his family including wife Mamta. Manisha is stated to have subsequently remarried on 5 October 2009.

5. By way of registered gift deed dated 14 October 2009, Manisha for herself and on behalf of Nidhi and Ajinkya, who were then minor, Neha and both the parents of Nitin, mother Vimaltai and his father Narayandas executed a registered gift deed on 14 October 2009 in favour of Mamta in respect of suit bungalow at Jalgaon.

6. Manisha instituted Regular Civil Suit No. 793 of 2012 on 04 October 2012 against Mamta and arrayed Vimaltai and her three children as defendants, alleging that the gift deed was got executed by practising fraud and claimed a declaration to that effect and also prayed for injunction against Mamta and her family members from obstructing possession in the suit bungalow.

7. Mamta contested the suit by filing an elaborate written statement. Neha also filed her written statement on 17 August 2015 and supported the

claim of her mother and even claimed to be transposed as the plaintiff.

8. Nidhi did not appear and the suit has been directed to proceed against her *ex parte*.

9. Ajinkya also did not file written statement. By moving an application (Exhibit-159), he requested for permitting him to file a written statement, but that application was rejected.

10. There was an interim injunction granted in favour of Manisha for protecting her possession in the suit bungalow and not to alienate and to create any third party interest. Since Mamata sold the suit bungalow to one Prashant Somani and Rachana Somani, at the request of Manisha, they were impleaded as defendants. She also filed an application for disobedience of the interim relief by moving Civil Miscellaneous Application No.248 of 2021 under Order XXXIX, Rule 2A of the Code of Civil Procedure.

11. Nidhi has also filed a separate suit R.C.S. No.53 of 2015 and challenged validity and legality of the same gift deed on the ground that it is not binding on her share and it was executed when she was a minor. Even Ajinkya has filed a separate suit bearing Special Civil Suit No. 4 of 2021 on the same lines as has been done by Nidhi.

12. In Manisha's Regular Civil Suit No. 793 of 2012, she submitted an

application (Exhibit-163) requesting for recording common evidence in all three suits, which has been rejected by the trial court.

13. Nidhi also filed a similar application (Exhibit-105) in her Special Civil Suit No. 53 of 2015 requesting for recording common evidence in her suit and Manisha's suit, but even that application has been rejected.

14. Manisha filed an application (Exhibit-15) in Civil Miscellaneous Application No.248 of 2020 for trying her suit as well as that application jointly. Even that application has been rejected. Nidhi in Writ Petition No. 603 of 2022 is challenging all these three orders.

15. Ajinkya has filed application (Exhibit-159) in Manisha's suit seeking leave to file written statement has been rejected and he has preferred Writ Petition No. 672 of 2022 challenging that order.

16. Ajinkya has also filed application (Exh.96) in Nidhi's suit with a prayer to set aside the order passed against him by directing the suit to proceed in his absence has also been rejected. He has preferred Writ Petition No. 704 of 2022 to challenge that order.

17. In the normal case scenario considering all the aforementioned facts and circumstances, it would have been convenient and appropriate for all three different parties that all these suits one filed by Manisha, another by

Nidhi and one by Ajinkya, questioning validity of the same gift deed, may be for different reasons, would have been tried and decided together. However, the peculiar facts and circumstances are such that the request at this juncture cannot be accepted and the trial court has rightly refused to try all the suits together. It needs to be borne in mind that Manisha has filed the suit way back in the year 2012. Nidhi did not appear in it and the suit has proceeded *ex-parte* against her. Ajinkya also did not file written statement and even his application for setting aside the no written statement order has been turned down and that order has reached finality.

18. Admittedly, both Nidhi and Ajinkya have filed separate suits for vindicating their claim in the suit bungalow. However, having noticed that they were not ready to contest the suit filed by their mother Manisha, the stand of the contesting respondent Mamta cannot be said to be inappropriate. She has every right to feel prejudiced if a joint trial is ordered at this stage, in as much as, it would surreptitiously enable Nidhi and Ajinkya to participate in the hearing of Manisha's suit in Regular Civil Suit No.793 of 2012.

19. Admittedly, that suit has been expedited by this court pursuant to which the trial has commenced. Manisha has tendered her affidavit in lieu of examination-in-chief and she has been put to an extensive cross examination touching every aspect of the case in great details. A part of cross examination was lastly held on 13 July 2022 and was still incomplete. If at this stage Nidhi

and Ajinkya are allowed to take part in the hearing by filing their written statement, it would not only prolong the decision of the suit but even place Mamta in disadvantageous position. Irrespective of her stand that Manisha and her children are acting in tandem and hands in glove, if they are allowed to participate at the hearing, they would then seek to lead evidence and even would seek to cross-examine Manisha which could have a drastic effect on the cross examination of Manisha conducted on behalf of Mamta. If really the children wanted to contest the suit and participate at the hearing they could have done it promptly.

20. It is to be noted that though Nidhi and Ajinkya were minors when the suit was filed, their maternal uncle was appointed as their guardian ad litem and being brother of Manisha, he also could have taken steps to contest the suit.

21. Again, in Nidhi's petition her age has been stated to be 25 years and she was prompt enough to file Special Civil Suit No. 53 of 2015. Ajinkya is stated to be aged 19 years. One cannot comprehend as to how and why if they wanted to prosecute their own remedies and when they were already parties to Regular Civil Suit No.793 of 2012 instituted by their mother Manisha, they failed to either appear or to file written statement. Permitting them to do so now would certainly create obstacles in early decision of the Manisha's suit and has grave tendency of causing serious prejudice to Mamta.

22. There is one more aspect, in Writ Petition No.603 of 2022 filed by Nidhi. She has not only put up a challenge to the order passed on her application (Exhibit-105) in her Special Civil Suit No. 53 of 2015, but even she has put up a challenge to the orders passed by the trial court on the application (Exhibit-163) in Special Civil Suit No. 793 of 2012 and (Exhibit-15) in CMA No. 248 of 2020, which in fact were the applications filed by Manisha and which she herself has not challenged. Allowing Nidhi to put up such challenge would circuitously enable her mother Manisha to challenge those orders passed on her applications. Therefore, even for this reason, since Manisha herself is not questioning legality of the orders on her applications, Nidhi would not have any *locus standi* to impugn the orders.

23. In view of the above state of affairs, all the writ petitions are dismissed.

24. Rule is discharged.

25. All pending civil applications stand disposed of.

(MANGESH S. PATIL, J.)