

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

**SECOND APPEAL NO. 505 OF 2022
WITH CIVIL APPLICATION NO. 10947 OF 2022**

Sayyed Jakir s/o Sayyed Shahaboddin,
Age : 44 years, Occu.: Agri.,
R/o. Majalgaon, Tq. Majalgaon,
Dist. Beed.

... APPELLANT
(Orig. Plaintiff)

VERSUS

1. Navvikas Mandal Majalgaon
Through its secretary
Digambar s/o Kisanrao Desmukh
Age : 83 years, Occu.: Agri,
R/o Sanmitra Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
2. Sayyed Munir Sayyed Baba,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
3. Sayyed Khalek s/o Sayyed Baba,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
4. Sharifabee Sayyed Baba,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
5. Sayyed Shakir s/o Sayyed Shahboddin,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
6. Najima d/o Sayyed Shahboddin,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.

7. Sayyed Ali s/o Sayyed Habib,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
8. Sayyed Mukhtar s/o Sayyed Habib
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
9. Sayyed Sattar s/o Sayyed Habib
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
10. Shahedabi w/o Sayyed Rashid
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
11. Sayyed Javed s/o Sayyed Rashid,
Age : 40 years, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
12. Sayyed Jahir s/o Sayyed Rashid,
Age : 32 years, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.

... RESPONDENTS
(Respondent No. 1 is Orig.
Defendant No.1 whereas
Res. No.2 to 12 are Orig.
Defendant nos. 2 to 12)

WITH

**SECOND APPEAL NO. 506 OF 2022
WITH CIVIL APPLICATION NO. 10948 OF 2022**

Sayyed Jakir s/o Sayyed Shahaboddin,
Age : 44 years, Occu.: Agri.,
R/o. Majalgaon, Tq. Majalgaon,

Dist. Beed.

... APPELLANT
(Orig. Defendant No. 7)

VERSUS

1. Navvikas Mandal Majalgaon
Through its secretary
Digambar s/o Kisanrao Desmukh
Age : 83 years, Occ.: Agri,
R/o Sanmitra Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
2. Sayyed Habib s/o Sayyed Dada (Died)
Through L.Rs.
- 2(a) Sayyed Sattar s/o Sayyed Habib,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
- 2(b) Sayyed Bapu s/o Sayyed Habib,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
- 2(c) Sayyed Ali s/o Sayyed Habib,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
- 2(d) Sayyed Shahedabi w/o Sayyed Habib,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
- 2(e) Sayyed Jahir s/o Sayyed Rasid,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
3. Sardarbee Sayyed Baba,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.

4. Sayyed Munir Sayyed Baba,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
5. Sayyed Khalek s/o Sayyed Baba,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
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Age : Major, Occu.: Agri,
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Tq. Majalgaon, Dist. Beed.
7. Sayyed Shakir s/o Sayyed Shahboddin,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.
8. Najima d/o Sayyed Shahboddin,
Age : Major, Occu.: Agri,
R/o Samata Colony, Majalgaon
Tq. Majalgaon, Dist. Beed.

... RESPONDENTS
(Respondent No. 1 is Orig.
Plaintiff whereas Res. No.2
to 8 are Orig. Defendants)

Mr. V. D. Sapkal, Senior Advocate i/b Mr. S. R. Sapkal, Advocate for
the appellant
Mr. Rajendra Deshmukh, Senior Advocate i/b Mr. B. S. Kudale,
Advocate for respondent No.1

CORAM : R. M. JOSHI, J.
RESERVED ON : 20/04/2023
PRONOUNCED ON : 04/05/2023

JUDGMENT :-

1. Learned senior counsel appearing for appellants has

posed following questions for consideration of this Court.

(i) Whether Courts below have committed error in holding that boundaries will prevail over area mentioned in sale deed?

(ii) Whether the suit filed by purchaser for correction of instrument of sale deed is barred by limitation?

2. These appeals are filed under Section 100 of the Code of Civil Procedure taking exception to the concurrent findings of Trial Court in RCS No. 12/2003 and 154/2009 and First Appellate Court in RCA No. 27/2014 and 26/2014 respectively. The parties are referred to as vendor and purchaser for the sake of convenience. Since both appeals involve common question of law and facts, they are decided together.

3. RCS No. 12/2003 came to be filed by Navvikas Mandal, Majalgaon (purchaser) for declaration that the purchaser is owner of Survey No. 386, admeasuring 1 Acre 30 R land (suit property). It is the claim of the purchaser that original defendant No.1 Sayyed Habib s/o Sayyed Dada and his real brother (vendors) were owners of Survey No. 386 and purchaser under registered sale deed dated 09/07/1986 has purchased the suit property for consideration of Rs.27,000/-. On the basis of said sale deed the record of rights was mutated in favour of purchaser. In the said sale deed the area of land

was approximately mentioned as 1 Acre 14 R. It is further case of the purchaser that the suit property was measured and was found to be 1 Acre 30 R i.e. more than recorded in the sale deed. Purchaser claims to have been given in possession entire survey No. 386. It is alleged that despite of this on 01/01/2003 defendants came in the suit property and obstructed the possession of the purchaser over it. On these averments suit came to be filed seeking declaration that the plaintiff is owner of 1 Acre 30 R land in Survey No. 386 and injunction against the vendors restraining them for obstructing the possession over the suit property.

4. An application (Exhibit 25) was moved by purchaser for amendment of plaint, which came to be allowed by order dated 05/06/2011. By said amendment purchaser sought correction of sale deed dated 09/07/1986. In this regard it is averred that on 01/01/2003 when vendors raised objection to the possession of plaintiff at that time purchaser had asked for the correction in the sale deed and which was refused and therefore, purchaser has a right to seek correction thereof.

5. Vendor filed written statement and opposed the contention of purchaser. There is no dispute about the fact that by

sale deed dated 09/07/1986 land admeasuring 1 Acre 14 R was sold to the purchaser. It is however denied that the said property sold has roads on all four sides. It is claimed by the vendors that entire area of 1 Acre 30 R land is not sold but 1 Acre 14 R land only was sold to the plaintiff under sale deed.

6. RCS No. 154/2009 was filed by the vendors for injunction against purchaser from causing obstruction/interference in peaceful possession of the plaintiff over the suit property i.e. a land admeasuring 16 R from Survey No. 386. It is contended by the vendor that earlier RCS No. 74 of 2006 was filed for declaration and injunction and same suit was withdrawn for technical reason. It is alleged that the purchaser has no right, title and interest in the suit property. Allegation is made that purchaser is raising illegal construction over the suit land on 19/09/2009 and hence suit is filed for injunction. Purchaser filed written statement opposing the contention of the vendor. It is specifically stated that purchaser is owner of survey No. 386 which is sold by vendor. Purchaser reiterated its contentions in RCS No. 12/2003.

7. In order to substantiate the claim, purchaser has examined Digamber Deshmukh and Pralhad Tandale and also placed

reliance on the documentary evidence. Whereas vendors led evidence of Jakir Sayyed Shahaboddin, Kadir Shaikh Amin, Rajbhau Kachru Gaikwad, Shaikh Bashir Shaikh and Tulshiram Kolte.

8. Learned Trial Court decided both suits by passing common judgment whereby RCS No. 12/2003 i.e. suit filed by the purchaser was decreed and suit filed by vendor being RCS No. 154/2009 came to be dismissed. Against the said judgment RCA No. 24/2014 and 26/2014 were filed. By impugned judgment and decree dated 08/04/2014 both appeals came to be dismissed.

9. Learned senior counsel for the vendor submits that both Courts below have committed serious error in misreading the sale deed. According to him there is error committed in holding that the boundaries shown in the sale deed will prevail over the area mentioned therein. According to him there is specific mention in the sale deed that the land admeasuring 1 Acre 14 R from Gut No. 386 is sold by vendors to the purchaser. Thus according to him when there is no dispute about the said fact, the both Courts below ought not to have considered the boundaries mentioned in the sale deed in order to hold that the purchaser is entitled for entire land of 1 Acre 30 R. According him only where the area is mentioned in approximate the

description of boundaries should prevail. He drew attention of the Court to sale deed (Exhibit 83) in which according to him shows that the vendor has agreed to sale and purchaser has agreed to purchase and area of 1 Acre 14 R land from Survey No. 386 and that the said area is shown by measurements. Thus when there is no dispute about the exact area of the land sold by the vendor to the purchaser, question of giving precedence to the boundaries over area mentioned does not arise. To support the said contention he placed reliance on the judgment in case of ***K. Subramanian and Ors. Vs. Ramabadra Reddiar, MANUTN/1071/2007, Dina Malar Publications, A Tamil Vs. The Tiruchirapalli, (1984) 2 MLJ 306*** and ***Sambhu Nath Dalal and Ors. Vs. Radharaman Middy and Ors. MANU/WB/0344/2002.***

10. He further argued that the finding recorded by the both Courts on the point of limitation stating that limitation is not applicable to Section 26 of Specific Relief Act is erroneous. According to him residuary Article 113 of Limitation Act would certainly apply to the correction of instrument and in any case the time for correction of the sale deed cannot be extended beyond period of three years.

11. Learned senior counsel for the purchaser supported the

impugned judgment and decrees with the contention that the the property can be identified either by boundary or by specific description and hence no error can be said to have been committed by the Courts in recording finding on the basis of boundaries mentioned in the sale deed. To support his contention he placed reliance in case of ***Subhaga and Ors Vs. Shobha and Ors, 2006 AIR SCW 4855*** and ***Shriram s/o Ratanlal Thakur (since deceased) though his L.Rs. Shanta w/o Shriram Thakur and others Vs. Rameshwar s/o Shaligram Chandak (since deceased) through his L.Rs. Sharada w/o Rameshwar Chandak and another, 2016(6) Mh.L.J. 750***. On the point of Section 26 of Specific Relief Act he submitted that it is open for the purchaser to seek rectification of sale deed by causing amendment to the plaint at any time. Reference is made to judgment of the Hon'ble Apex Court in case of ***Puran Ram Versus Bhaguram and Anr., 2008 DGLS(SC)332 Supreme Court***.

12. There is no dispute about the fact that sale deed (Exhibit 83) dated 09/07/1986 is executed by the vendors i.e. owners of Survey No. 386 and the said document is duly registered with Sub Registrar of Assurance. It is mentioned in sale deed that the land admeasuring 1 Acre 14 R is sold from Survey No. 386. It further

records boundaries of the land on all four sides stating that there is road at all sides of land. There is also categorical mention in the sale deed that the land within the four boundaries is sold and purchaser is put into possession thereof.

13. Suit filed by the purchaser clearly shows that the area of Survey No. 386 was shown in the record of 1 Acre 14 R and in respect of the entire survey purchaser's name was mutated in the record of right on the basis of sale deed. On the other hand it is contention of vendor that only 1 Acre 14 R land was sold to the purchaser. Though it is denied that on the measurement of the land by purchaser it was found to be 1 Acre 30 R but the vendors have not placed any evidence on record to show that the said fact was within their knowledge or that there is record to show that survey No. 386 admeasures 1 Acre and 30 R land.

14. The law on the point of the interpretation of sale deed is clear to say that in case where a dispute arises between the parties as to exact area of the land sold by the vendor to the purchaser, the boundaries will prevail over the area mentioned therein. In the present case from the recitals of the sale deed it can be said that the vendor was intending to sell entire Survey No. 386 and therefore,

there is specific mention that the property described by boundaries is sold and given in possession. Four boundaries of land shows road on all sides, which is more than sufficient to hold that the land within four boundaries was sought to be sold.

15. Now question arises as to whether the mention of area of 1 Acre 14 R sale deed or the boundaries shall prevail. The judgments cited supra by both sides on the issue clearly shows that where there is dispute about the area intended to be sold by the vendor, the description of the suit property i.e. boundaries will prevail. In the instant case vendor has not come out with the case that the sale of land was on per unit (Are) consideration. Thus, there is reason to believe it was lumpsum consideration decided between the vendor and plaintiff for transaction of sale of suit property.

16. Having regard to the aforesaid facts and recitals of the sale deed, in the instant case there is a dispute as to whether Vendor had sold land admeasuring 1 Acre 14 R or 1 Acre 30 R, from Gut No. 386. As per law settled, when dispute arises about the area sought to be sold, the boundaries of property shall prevail over it. At the cost of repetition, sale deed in no uncertain terms records that vendor had sold land within four boundaries mentioned therein with handing over

of possession thereof. In these facts, no fault can be found in the findings of both Courts to give preference to boundaries over the area of land mentioned in sale deed. The finding recorded by the both Courts below in this respect therefore needs to be confirmed.

17. As regards the issue of limitation in seeking correction of sale deed is concerned, the purchaser has filed suit on 10/01/2003 . It is stated that on 01/01/2003 objection was raised by the vendor and at that time the purchaser had asked for correction of the sale deed but the same was refused. There is no dispute about the fact that the amendments sought to the plaint was allowed by the Trial Court after hearing both sides. Further there is no order passed to the effect that the said amendment was made applicable from the date of application or amendment. In absence of any specific order to that effect, the said amendment relates back to the date of filing of the suit.

18. At this stage it would be relevant to refer to Section 26 of the Specific Relief Act which reads thus:

"26. when instrument may be rectified.-
(1)When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of

1956), applies] does not express their real intention, then-

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him ask for rectification of the instrument.

(2) If, in any suit in which a contract or other instrument is sought to be rectified under subsection (1), the Court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the Court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the Court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:

Provided that where a party has not claimed any such relief in his pleading, the Court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim."

19. The aforesaid provision makes it clear that rectification of

instrument can be permitted when there is mutual mistake of the parties. Here in this case there is no case of either side of fraud or suppression of fact and that for want of knowledge of exact area of survey No. 386 a mistake has occurred in recording it's area in sale deed. Thus, present case is covered by said provision. The purchaser being party to sale deed can institute suit for rectification or even where a party has not claimed any such relief in the pleadings, Court shall at any stage of the proceeding allow him to amend pleading on just terms. As mentioned above application for amendment is allowed by Trial Court and in absence of making its application prospective, the amendment relates back to the date of filing of suit. Having regard to language of section, the said order is fully justified.

20. While deciding question raised by vendor about applicability of Limitation Act to the claim of purchaser for rectification of instrument, it is necessary to refer to Article 113 of Limitation Act. It reads as:

Description of application	Period of limitation	Time from which period begins to run
113. Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

21. This is a residuary provision, applicable to any suit for

which no period of limitation is provided. By virtue of amendment though it is permissible to claim rectification of instrument in any proceeding, it cannot be said that such claim would have no limitation. According to this article, three years period is provided within which suit must be filed from the right to sue accrues.

22. With regard to Article 113 of Limitation Act, Hon'ble Apex Court in case of ***Shakti Bhog Food Industries Ltd. V. Central Bank of India, AIR 2020 Supreme Court 2721*** has held that,

"10. Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue "first" accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him) and Article 104 (when the plaintiff is "first" refused the enjoyment of the right). The view taken by the trial Court, which commended to the first appellate Court and the High Court in second appeal, would inevitably entail in reading the expression in Article 113 as-when the right to sue (first) accrues. This would be rewriting of that provision and doing violence to the legislative intent. We must assume that the Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression "when the right to sue accrues" in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts."

. In the light of above observations, the facts in present case can be ascertained.

23. In the instant case the right to sue accrued for the purchaser when vendor obstructed possession and refused to rectify the sale deed. There is nothing on record to show that purchaser had knowledge about mistake in sale deed since time of execution of document. Thus, there accrues no cause of action to file suit for rectifications at that time. Thus, there is no substance in the arguments of vendor that after period of 25 years rectification is sought. The cause of action accrued for rectification is spelt out specifically and order of amendment was passed. Pertinently, said order is neither challenged before First Appellate Court nor in these appeals, by raising specific ground in appeal memo. As such said order has attained finality and hence it has to be held that the suit filed by the purchaser for prayer of rectification is within limitation, from accrual of right to sue. Though the finding that no limitation would apply to the rectification of instrument can not sustain, however in the facts of the case the amendment being treated as on the date of filing of the suit, the same cannot be considered to be barred by limitation.

24. Aforesaid discussion shows that no error is committed by both Courts appreciating evidence record and findings recorded can not be termed as perverse. Similarly, in the peculiar facts of the case, no fresh question of law arises for determination as the issues involved herein could be decided on law already settled. As such no substantial question of law is involved herein. As a result of this both appeals stand dismissed.

25. Pending civil applications, if any, stand disposed of.

(R. M. JOSHI, J.)

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