

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

CIVIL APPLICATION (CAS) NO. 1/2023 IN
SECOND APPEAL NO. 470/2018

Smt. Roopa W/o Sanjay Mukte through P.O.A. Shri Sanjay Govindrao Mukte
Vs.

Smt. Sheelprabha Wd/o Chandrasen Ahirrao and others

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

Court's or Judge's orders

Shri S.N. Mahajan, Advocate for appellant
Shri Abhijeet Khare, Advocate for respondent Nos. 1 to 3

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 02/03/2023

Present application is filed for taking action against the power of attorney holder. The contention of the appellant is that she filed second appeal against the judgment and decree passed by District Judge – 8, Nagpur in Regular Civil Appeal No. 487/2012. It is contended that in Regular Civil Appeal No. 487/2012, respondent No.7 filed Vakalatnama under his signature on behalf of Harshala W/o Rajendrarao Ahirrao, Sanjay C. Ahirrao, Ramchandra J. Chauhan and Surekha Sawant stating that he is power of attorney holder on behalf of Shashiprabha Tejsingh Ahirrao. It is contention that Rajendra Chandrasen Ahirrao and Sanjay Chandrasen Ahirrao expired on 22/08/2008 and

22/07/2012. The power of attorney executed in favour of these persons become stale in the eye of law. It is further submitted that the document of agreement of sale and development dated 07/07/2001 and power of attorney dated 09/07/2001 are not binding upon the plaintiff. In spite of this, the applicant on the basis of this power of attorney proceeded further. As such, it is prayed that initiate the action under the provisions of forgery against respondent No.7.

2. In reply learned Counsel for the respondent submitted that the judgment passed by Trial Court is already set aside by First Appellate Court and it merged into the Appellate Court's order. The power of attorney which was executed by six people in favour of Shashiprabha Ahirrao cannot become stale on expiry of two of the person executing power of attorney which is signed by power of attorney holder on behalf of those four individual who are still alive. If order of Appellate Court is perused, the share of the plaintiff has reduced to $1/24^{\text{th}}$ from $1/6^{\text{th}}$ and it is specifically held that the documents, power of attorney and agreement of sale and development (Exh Nos. 95 and 96), are not binding upon the share of the plaintiff. Thus, by this order, it is made clear that it is not binding to the share of plaintiff. As such, after considering the factual position on record, I am satisfied that there is no forgery or fraud *prima facie* played by the respondent No.7.

3. The learned Counsel for the applicant has not pointed out forgery or fraud by respondent No.7. The reliance is placed by the learned Counsel for appellant in ***S.P Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. And others, reported in AIR 1994, SC 853***, in support of his contention that guilty party is liable to be thrown out at any stage. However, as observed above, there is no case of fraud or forgery made out by learned Counsel for applicant to initiate any action. As such, application stands dismissed.

4. List the matter for admission on 09/03/2023.

(SMT. M.S. JAWALKAR, J.)