



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

SECOND APPEAL NO.423 OF 2009

APPELLANT : Smt. Yamunbai Rushi Sardare (**Dead**
Ori. Pltff. **thr LRs.,**
On R.A.

aged about 73 years, occupation
cultivation resident of Village Yerkad,
Tahsil Dhanora, District Gadchiroli
LRs of Appellant brought on record

Amendment carried out
as per Court's order
dated 26.08.2016

Shri. Wamanrao S/o Tulshiram
Indurkar (**Dead**) **thr. LRs,**
Aged about-68 yrs., Occ.-
Agriculturist, R/o Village Yerkad,
Tah. Dhanora, Dist. Gadchiroli

LRs of Appellant/Wamanrao

Amended as per Court's
order dated 09.10.2023.

1. Shri. Kuldip S/o Wamanrao Indurkar,
Aged about 50 yrs., Occ.-
Agriculturist
2. Shri. Sanjay S/o Wamanrao Indurkar,
Aged about – 48 yrs., Occ.-
Agriculturist
3. Shri. Abhay S/o Wamanrao Indurkar,
Aged about- 48 yrs., Occ.-
Agriculturist

All R/o Village Yerkad, Tah.
Dhanora, Dist. Gadchiroli.

..VERSUS..

RESPONDENT : Shri Madhukar Jagannath Bhaisare,
Ori. Deft. aged about 36 years, occupation
On R.A. cultivation resident of Village Yerkad,

Tahsil Dhanora, District Gadchiroli.

Mr N. R. Bhisikar, Advocate for Appellants.
Mr A. Sambre, Advocate for Respondent.

CORAM : M. W. CHANDWANI, J.
RESERVED ON : 20th JUNE, 2024.
PRONOUNCED ON 23rd AUGUST, 2024.

JUDGMENT

. Heard learned counsels appearing for both the parties.

2. This appeal is an exception to the judgment and decree dated 11.08.2009 passed by the District Judge, Gadchiroli, in Regular Civil Appeal No.9 of 2009, thereby allowing the appeal of the respondent herein and setting aside the judgment and decree of the Trial Court passed in Regular Civil Suit No.12 of 2008 (Old No.40 of 2005) dismissing the suit of Yamunabai – the original plaintiff.

3. Bare facts, which give rise to the present appeal, can be summarized as under :

Yamunabai – the original plaintiff filed a suit against the respondent – Madhukar Jagannath Bhaisare for declaration, possession as well as permanent injunction, apart from damages on the premise that the sale-deeds pertaining to agriculture land bearing survey No.69 admeasuring 1.62H situated at Mouza Yerkad, Tahsil Dhanora, District Chandrapur and house property Nos.1 and 2 situated within the jurisdiction of Gram Panchayat Vill, Yerkad (hereinafter referred to as “the suit property”) allegedly gotten executed by Madhukar in his favour, by playing fraud and taking undue advantage of the position of Yamunabai. By the said suit, Yamunabai sought possession of the suit property on the ground that the sale-deeds are void and not binding on her. After the death of her husband, Yamunabai was the owner of the suit property.

The plaint depicts that the respondent used to extend a helping hand towards Yamunabai for cultivating her

agriculture land and used to provide meals and medicine. After the demise of her husband, Yamunabai had given agriculture land to Wamanrao Tulshiram Indurkar for 4 to 5 years on “Theka” on crop sharing basis. Thereafter, from 1995-96, the said agriculture land was given to the respondent for cultivation on Theka basis, since Wamanrao refused to cultivate the said agriculture land. For the year 2005-06, respondent refused to give the share of the crop to Yamunabai, as agreed in Theka and started claiming to be the owner of the agriculture land. On enquiry with Revenue Authority, particularly by obtaining 7/12 extract and index register, Yamunabai came to know about the sale-deeds of the suit property executed on 27.09.1999 and registered on 03.12.1999. Therefore, Yamunabai filed Regular Civil Suit No.12 of 2008, on the ground that her thumb impression was obtained by the scribe – Dattu Kalmalkar on the sale-deeds in question under the pretext that the document is a Thekapatra.

Respondent resisted the claim of Yamunabai and came up with a case of purchase of agriculture land as well as house from Yamunabai coupled with the delivery of possession of the suit property for valuable consideration.

The Trial Court, after framing the issues, decreed the suit by passing impugned judgment dated 17.02.2009, thereby declaring the sale-deeds dated 27.09.1999, which were registered on 03.12.1999 as null and void and directed the respondent - Madhukar to handover vacant possession of the suit property and also restrained him from disturbing the possession of Yamunabai over the suit property. Thereafter, Madhukar preferred an appeal before the District Judge, Gadchiroli under Section 96 of the Civil Procedure Code. The First Appellate Court allowed the appeal filed by Madhukar and set aside the judgment and decree passed by the Trial Court. Being aggrieved with the decision of the First Appellate Court, Yamunabai has filed the present appeal under Section 100 of the Civil Procedure Code.

4. This Court, admitted the appeal by its order dated 22.02.2010, on the following substantial questions of law, which need to be answered in this appeal :

“1. Whether the lower Appellate Court has come to the a perverse finding that there was no fiduciary relationship between the appellant and the respondent considering the evidence on record and as such failed to consider the onus to establish the genuineness of the sale deed shifted on the respondent ?

2. Whether the lower Appellate Court was justified in coming to the conclusion that the suit barred by limitation when the suit filed by the appellant was for declaration as well as for restoration of possessions ?”

5. Mr N. R. Bhisikar, learned counsel appearing for the appellants, would submit that Yamunabai had given her agriculture land to one Wamanrao Tulshiram Indurkar for cultivation on “Theka” basis for 4 to 5 years. Thereafter, Wamanrao refused to continue with the said arrangement, therefore, the said agriculture land was given to Madhukar for cultivation on “Theka” basis. Initially, Madhukar was prompt in giving share from the crop to Yamunabai. He used to take care of her and used to provide medicines as well as meals, therefore,

a cordial and fiduciary relationship developed between them. Taking undue advantage of the position of Yamunabai, Madhukar, under the pretext of execution of Thekapatra, took Yamunabai to the Sub-Registrar's Office and got the sale-deeds registered on 03.12.1999, which is shown to be executed on 27.09.1999. According to him, there are various suggestions on record which go to show that there was a fiduciary relationship between Yamunabai and Madhukar, but that was not considered by the First Appellate Court and by passing the impugned judgment and decree, the First Appellate Court set aside the judgment and decree passed by the Trial Court.

6. Taking his argument further, Mr N. R. Bhisikar, learned counsel for the appellants submitted that Yamunabai was an illiterate women and therefore, Madhukar used to help her in cultivating the agriculture land. Yamunabai had executed power of attorney in favour of Madhukar in Succession Case No.7 of 1997 filed by the deceased Wamanrao against Yamunabai and he used to accompany her in attending the said

case. Therefore, it has been established that Yamunabai was in a fiduciary relationship with Madhukar. It has been also submitted that at that time, the prevailing market rates of the agriculture land was Rs.30,000/- to Rs.32,000/- per acre, whereas consideration in the sale-deed of agricultural land is shown as Rs.20,000/-, which also depicts that the transaction on the face of it is unconscionable. In view of the above, the burden of proving that the transaction was done in good faith was on Madhukar, which he failed to discharge. The Trial Court has also held the same and decreed the suit filed by Yamunabai, whereas, the Appellate Court, ignoring this principle of law, disturbed the findings of the Trial Court and dismissed the suit of Yamunabai by allowing the appeal filed by Madhukar.

7. Mr Bhisikar, learned counsel for the appellants, submits that the First Appellate Court has not appreciated the legal position in respect of burden of proof. In case where a person is in relation of active confidence, the burden of proving

the good faith of the transaction is on the party, who is in position of active confidence or in a position to dominate the will of another, who stands in a fiduciary relationship with him. To buttress his submission, he seeks to rely on the decision of the Hon'ble Supreme Court in the case of *Krishna Mohan Kul alias Nani Charan Kul and another vs. Pratima Maity and others, AIR 2003 SC 4351*, wherein the Hon'ble Supreme Court in para 12 has held as under :

“12. when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the Court watches with jealousy all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation, the law presumes everything against the transaction and the onus is cast upon the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position.....”

8. Conversely, Mr Abhay Sambre, learned counsel appearing on behalf of the respondent vehemently submits that Yamunabai had initially given the agriculture land to Wamanrao for cultivation. After some time, he refused to continue to cultivate the agriculture land and therefore, Yamunabai had given her agriculture land on Theka basis to Madhukar. After some years, she was in dire need of money, therefore, she sold her agriculture land as well as her house to Madhukar by executing the registered sale-deeds dated 03.12.1999. She kept mum for all these years till 2005 in spite of knowledge that the name of the respondent - Madhukar was mutated in the 7/12 extract of agriculture land and in the Gram Panchayat record in respect of the house. However, at the instance of Wamanrao, she filed a suit against Madhukar alleging the fraud played by him and therefore, prayed for cancellation of sale-deeds on the premises that she executed Thekapatra. Learned counsel for respondent vehemently submits that though initially the agriculture land was given to Madhukar, but till date no Thekapatra has been executed by

Yamunabai, therefore, there is no question of executing Thekapatra in the year 1999. According to him, the power of attorney was executed in favour of Madhukar in the year 2001, whereas the sale-deeds were of the year 1999, therefore, that cannot be considered as one of the factors while considering the relationship between Yamunabai and Madhukar. According to him, the Trial Court as well as the First Appellate Court have repealed the submission of Yamunabai regarding sale consideration mentioned in the sale-deeds as lower than the prevailing market rates. Therefore, the First Appellate Court has rightly held that there was no fiduciary relationship between Yamunabai and Madhukar and Yamunabai failed to prove that she signed the sale-deeds believing them to be Thekapatra, therefore, he pressed for dismissal of the appeal.

9. It appears that the Trial Court, while answering the issue Nos.1 and 2, relied on the decision of the Hon'ble Supreme Court in the case of *Krishna Mohan Kul alias Nani Charan Kul* (supra), wherein it has been held in para 23,

recorded its finding is as under :

“23. Now it is necessary to see whether the stands taken by the plaintiff are proved by her or not. It is her specific contention that, initially she gave the suit land to Waman Indurkar for 4 to 5 years on Theka. Thereafter, from 1997-98, she gave the suit land to defendant on Theka. Under the pretext of Thekepatra, the defendant took her thumb impression on the alleged sale deeds executed 27.09.1999. Interestingly, say has not filed any previous Thekepatra showing that she used to give her land on Theka. The Succession Case was filed on 20.06.1997 by one Daulat against her, and the alleged Mukhatyarnama is executed 06.07.2001. The sale-deeds executed are on on 27.09.1999. Therefore, Learned Counsel for defendant vehemently argued that it cannot be said that the defendant played fraud with the plaintiff. According to this Court, here, it is not material as to when Mukhtyarpatra was executed or when Succession case filed. The question is whether the plaintiff was in fiduciary relationship or active confidence of the defendant. It is an admitted fact that plaintiff is an illiterate woman and defendant used to help her in cultivating the suit land. The defendant also took the loan on the suit land. The fact of Mukhtyarpatra in Succession Case No. 7 of 1997 is also admitted by the defendant. He used to come in the Court along with her in attending the case. Therefore there is every chance of influence over the plaintiff by the defendant.

10. The Trial Court, relying on the decision of **Krishna Mohan Kul** (supra), has held that since there was a fiduciary relationship between Yamunabai and Madhukar, the burden was on Madhukar to prove the execution of the sale-deeds was

in good faith. The Trial Court then held that the respondent failed to prove that the contents of the sale-deeds were read over to Yamunabai. Accordingly, suit came to be decreed.

11. The First Appellate Court, while setting aside the findings of the Trial Court and non-suiting Yamunabai, has held that the Trial Court was wrong in shifting the burden on Madhukar, since the facts do not indicate a fiduciary relationship between Yamunabai and Madhukar. The First Appellate Court has also held that Yamunabai was aware of the sale-deeds in wake of mutation entry in the year 1999 and the suit filed in 2005 for declaration is time barred.

12. Perusal of the plaint goes to show that Yamunabai pleaded that she was in need of shelter and Madhukar used to help her regularly, therefore, he stands in a position of confidence/trust. The plaint further depicts that Yamunabai never put her thumb impression on any document with an intent to sell any property and she signed the said sale-deeds presuming them to be Thekapatra for agriculture land. Thus,

for claiming undue influence as defined under Section 16 of the Contract Act, 1872, one has to admit the execution of the document as it is and has to come up with a case of executing the document on the ground that executee dominated the executon's will. If Yamunabai came up with a case of signing the document of the sale-deeds as Thekapatra, precisely, it cannot be the case of undue influence on the basis of fiduciary relationship. Rather, the suit appears to have been filed on the basis of misrepresentation or fraud.

13. Be that as it may, fact remains that as per the case of Yamunabai, she had given her agriculture land to Madhukar on Theka on the basis of sharing of crop. Rather prior to that, the said agriculture land was given to Wamanrao. This indicates that the relationship between Yamunabai and Madhukar was contractual and they were governed by the contract. The circumstances of executing power of attorney in favour of Madhukar has been relied upon by Yamunabai to show that there was a fiduciary relationship between her and Madhukar.

But, the fact remains that the said power of attorney was executed by Yamunabai in the year 2001, whereas the sale-deeds were executed in the year 1999 much before the alleged execution of power of attorney in Succession Case No.7 of 1997 against Wamanrao. It appears that the Trial Court was impressed by the circumstances that Madhukar took a loan on the suit property by mortgaging it and proceeded to hold that there was a fiduciary relationship between Yamunabai and Madhukar. But, fact remains that the suit property was mortgaged to a Co-operative Bank on 20.12.2000 after the sale-deeds were executed in the year 1999, therefore, this cannot be the circumstance in favour of Yamunabai to prove the fiduciary relationship between her and Madhukar. Rather, it goes to show that the sale-deeds executed by Yamunabai in the year 1999 were acted upon.

14. Be that as it may, even it is presumed that there was a fiduciary relationship between Yamunabai and Madhukar, record reveals that Madhukar has examined the attesting

witnesses of the sale-deeds, who during their cross had deposed that Yamunabai wanted to sell her agriculture land and house to Madhukar and accordingly, consideration was given by Madhukar to Yamunabai. Further, Yamunabai herself has admitted in her cross-examination that after putting her thumb impression, her attesting witnesses signed on the sale-deeds. Perusal of the sale-deeds at Exhibits - 70 and 71 show that they record the endorsement regarding acceptance of execution of sale-deeds. The First Appellate Court has rightly held that the Trial Court has inferred on surmises and conjecture that the possibility cannot be ruled out that Madhukar might have taken thumb impression posing the document as Thekapatra.

15. This takes me to the second substantial question of law regarding limitation. Record reveals that the name of respondent - Madhukar was mutated on the revenue record i.e. 7/12 extract. The Pherphar Patrak which is prepared at the time of enquiry before mutating the name in respect of sale-deeds goes to show that Yamunabai was present in the said enquiry,

which was done in the year 1999 itself. In spite of having knowledge, Yamunabai did not make a fuss. This is also one of the circumstances which suggests that Yamunabai executed documents in the year 1999 knowing well that these are the sale-deeds. This will also be useful material to decide whether the suit filed by Yamunabai was beyond the period of limitation. She got the knowledge on 03.12.1999 when she remained present before the Talathi during enquiry for mutation. This can be evident from Pherphar Patrak Exhibit - 107 which records that Yamunabai was present and she saw the sale-deed dated 03.12.1999 in respect of agriculture land and did not take any objection. The limitation period for filing a suit for cancellation of sale-deeds is three years from the date of knowledge of the sale-deeds executed. Thus, she got the knowledge on 03.12.1999, whereas the suit came to be filed for cancellation of the sale-deeds and for possession in the year 2005 that is after three years from the date of knowledge of the sale-deeds executed. Therefore, the First Appellate Court was right in holding that the suit filed by Yamunabai was barred by

limitation.

16. Mr Bhisikar, learned counsel for the appellants, at this stage submits that the substantive relief was for possession and therefore, the limitation for filing the suit should be counted as 12 years as per Article 65 of the Limitation Act, 1963 and not three years, which is applicable for cancellation of sale-deeds.

17. Evidently, the suit was a composite suit for cancellation of sale-deeds as well as recovery of possession. The relief for possession is a consequential relief and substantive relief was for cancellation of sale-deeds. Therefore, the limitation period is required to be considered with respect to substantive relief claimed and not consequential relief, which would be three years from the date of knowledge of sale-deeds sought to be cancelled.

18. A reference can be made to the decision of the Hon'ble Supreme Court in the case of Rajpal Singh vs. Saroj (Deceased) through Legal Representatives and another, (2022)

15 SCC 260, wherein the Hon'ble Supreme Court in para 14

has held as under :

“14. The submission on behalf of the original plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the Sale Deed dated 19.04.1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled. Therefore, the suit, which was filed by the original plaintiff for cancellation of the sale deed, can be said to be a substantive therefore the same was clearly barred by limitation. Hence, the learned Trial Court ought to have dismissed the suit on the ground that the suit was barred by limitation. As such the learned First Appellate Court was justified and right in setting aside the judgment and decree passed by the learned Trial Court and consequently dismissing the suit. The High Court has committed a grave error in quashing and setting aside a well-reasoned and a detailed judgment and order passed by the First Appellate Court dismissing the suit and consequently restoring the judgment and decree passed by the Trial Court.”

19. In view of the above discussion, the findings recorded by the First Appellate Court are just, proper and legal and do not require any interference. The First Appellate Court has

rightly dismissed the suit filed by Yamunabai by setting aside the judgment and decree of the Trial Court. The substantial questions of law framed are answered, accordingly. The appeal is devoid of merits, hence it fails.

(M. W. CHANDWANI, J.)