



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

SECOND APPEAL NO. 266 OF 2025

Mumtajbee W/o Alisaheb Shaikh
Since deceased through her L.Rs.
Ayub Alisaheb Shaikh and others .. Appellants
Versus
Ismail Miyalal Shaikh .. Respondent

Shri Ranjit D. Gaikwad, Advocate for the Appellant.
Shri Mahesh P. Kale, Advocate h/f Shri Atul R. Muley, Advocate
for the Respondent.

CORAM : SHAILESH P. BRAHME, J.
DATE : 14TH AUGUST, 2025.

FINAL ORDER :

. Heard both sides.

2. This appeal is arising out of judgment and decree dated 26.02.2018 passed by the Trial Court in R.C.S. No. 594 of 2011, which is reversed by the lower Appellate Court vide judgment dated 13.11.2024 in R.C.A. No. 57 of 2018. Appellant is original defendant in a suit filed by the respondent for declaration and recovery of amount of compensation.

3. Parties are litigating for amount of compensation of Rs. 65,969/-, which is lying with the acquiring body for acquisition of 1H 21R of gut No. 133. Parties stake rival claim to title and consequentially to the amount of compensation. Original owner was real brother of the appellant Majid Pathan and after his

demise suit land devolved upon his heirs. They sold suit land to the respondent vide sale deed dated 04.11.1987. Part of the suit land was acquired and award was passed in the year 1988. Appellant - Mumtajbee claimed title on the basis of gift executed in the year 1986 by the original owner Majid Pathan. Award was passed in the name of Mumtajbee. The respondent objected for the same, hence the parties were directed to get their rights settled from Civil Court.

4. The respondent filed suit on the basis of sale deed dated 04.11.1987, whereas appellant contested it on the basis of gift and the record of rights. Before Trial Court both the parties adduced oral evidence. The suit was dismissed by the Trial Court. Being aggrieved appeal was preferred by the present respondent. During the pendency of appeal, appellant – Mumtajbee died on 18.12.2022. Her death was not brought to the notice of the lower Appellate Court by either of the parties or their learned counsels. Ultimately, by judgment dated 13.11.2024 appeal was allowed and the respondent was held to be entitled to receive the compensation.

5. By preferring application seeking leave to prefer appeal, legal heirs of deceased Mumtajbee have brought this appeal. Application for leave was allowed and thereafter this Court is hearing the second appeal on merits.

6. Substantial question of law involved in this matter is as to whether the judgment and decree passed by the lower Appellate

Court is nullity being passed against a dead person i. e. Mumtajbee w/o Alisab Shaikh ?

7. Both the learned counsels appearing for the parties addressed me on above substantial question of law. There is no dispute that Mumtajbee died on 18.12.2022. She was sole defendant in the Trial Court. In R.C.A. No. 57 of 2018, she was sole respondent. She was being represented by a lawyer. Her death was not communicated neither by her lawyer appearing before the lower Appellate Court, nor by any legal heirs, who are before this Court. The judgment was delivered by the lower Appellate Court on 13.11.2024, which is against a dead person. The judgment and decree passed against a dead person is a nullity, is a trite law. Learned counsel for the appellant has rightly placed reliance on the **judgment dated 27th April, 2017 of the Supreme Court in the matter of Gurnam Singh (D) Through L.Rs. and others Vs. Gurbachan Kau (D) By L.Rs. and others in Civil Appeal No. 5671 of 2017.**

8. For the reasons stated above, I have to allow present appeal partly and relegate the parties to the lower Appellate Court so as to extend an opportunity of hearing to the appellant.

9. It cannot be ignored that one of the heirs of the deceased Mumtajbee i. e. present appellant No. 1A – Ayub S/o Alisaheb Shaikh had appeared as a witness on behalf of his mother in the Trial Court. He was also a power of attorney holder. Therefore, it cannot be said that the heirs were not aware of the litigation.

But still fact remains that it is a decree against a dead person. I, therefore, pass following order.

O R D E R

- A. The second appeal is partly allowed.
- B. Judgment and decree dated 13.11.2024 passed by the Principal District Judge, Latur in R.C.A. No. 57 of 2018 is quashed and set aside and the matter is relegated to the lower Appellate Court for the consideration on merits afresh.
- C. An endeavour shall be made by the learned Judge to decide the appeal expeditiously and preferably within a period of eight (08) months from the date of appearance of the parties by extending an opportunity of hearing to the parties.
- D. Parties shall appear before the lower Appellate Court on 02.09.2025.
- E. Appellant shall pay cost of Rs. 5,000/- (Rs. Five thousands only) to the respondent, which is a condition precedent for proceeding with the appeal.
- F. Decree be drawn up accordingly.

[SHAILESH P. BRAHME J.]