



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.71 OF 2025
WITH
CIVIL APPLICATION NO.14276 OF 2019
IN SA/71/2025

LATABAI RAMESH KOLI

VERSUS

SUKDEO VISHRAM KOLI DECEASED THROUGH LRS PRAKASH
DECEASED THROUGH LRS UJJWALA AND OTHERS

Mr. R. K. Jadhavar and Mr. M. A. More, Advocate for Appellant
Mr. A. P Bhandar, Advocate for Respondent No.10
Mr. R. K. Suryawanshi, Advocate for Respondent No.11B, 12, 13A, 13C to
13EE, 14, 15 and 16.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 17th FEBRUARY, 2025

ORDER :

1. Appellant/original plaintiff impugns judgment and decree dated 20.10.2018 passed by District Judge, Jalgaon in Regular Civil Appeal No.100 of 2015, thereby upholding judgment and decree dated 25.06.2015 passed by Civil Judge Junior Division, Erandol in Regular Civil Suit No.14 of 2012 (old Special Civil Suit No.375 of 1997).

2. Appellant is original plaintiff in Regular Civil Suit No.14 of 2012. She instituted suit contending that suit property was received by her grand mother Supdabai through gift executed by Ishram Koli, i.e. her husband. Gift deed was

registered on 12.04.1960. Consequently, mutation entry was certified in her name. However, defendant Nos. 1 to 5 illegally shown partition and distribution of the property among themselves and deprived right of plaintiff. Hence, she claimed 1/7 share in suit property and its possession. Defendant Nos.1, 2 and 5 to 7 refuted claim of plaintiff and contended that heirs of Supdabai and Ishram Koli are not made parties and suit is barred by limitation.

3. The Trial Court framed issues based on pleadings of the parties and held that plaintiff failed to prove gift and right in suit property. Eventually, dismissed suit vide judgment and decree dated 25.06.2015. She preferred Appeal before District Judge, who confirmed decree.

4. Mr. R. K. Jadhavar, learned Advocate appearing for appellant/plaintiff submit that the gift deed is executed on 12.04.1960, which has been duly registered. It is more than 30 years old document. The formal proof of such document was not necessary in view of Section 90 of the Evidence Act. He would further submit that even otherwise Supdabai was absolute owner of the property, she became absolute owner by operation of Section 14(1) of Hindu Succession Act. However,

the Courts below failed to appreciate the factual and legal position and dismissed suit.

5. Per contra, Mr. Bhandari, learned Advocate appearing for respondent, supports concurrent judgment and decree as passed by the Courts.

6. Apparently, plaintiff is raising her claim on the basis of registered gift deed dated 12.04.1960 executed in favour of her mother Supdabai by her grandfather, Ishram Koli. Registered gift deed is placed at Exhibit 77. In view of Section 90 of Evidence Act, once it has come from proper custody, raises presumption as regards to signature and execution of document. However, contents of document are required to be independently proved by leading evidence. Pertinently, gift deed does not bear signature of Supdabai to show that she has accepted the gift. Except so called mutation entry, plaintiff could not bring on record any evidence to show that Supdabai was put into possession of gifted land. It appears from cross examination of plaintiff that her mother died in the year 1973-74. The 7/12 extract shows that even in the year 1960-61, the suit property was cultivated by Ishram Koli and thereafter, it is in possession of defendants.

6. At this stage, reference to Section 122 of the Transfer of Property Act needs to be made which reads thus : -

122. "Gift" defined.—"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is till capable of giving, If the donee dies before acceptance, the gift is void.

7. Plain reading of aforesaid provision spells out that the acceptance of gift must be made during lifetime of donor and while he is still capable for giving. However, if donee died before acceptance, the gift is void. It is, therefore, clear that unless it is established that during lifetime of donee, there is no acceptance of gift, the gift shall render void. Appellate Court has rightly observed that there is no evidence of acceptance of gift by Supdabai during lifetime of Ishram Koli.

8. The second contention of Mr. Jadhavar, learned Advocate appearing for the appellant is that Supdabai had acquired absolute title of the property in view of Section 14(1) of the Hindu Succession Act. However, even for operation of Section 14(1) of Hindu Succession Act, basic ingredient of delivery of possession of suit land needs to be established.

There is nothing to show that Supdabai was put into possession of land in pursuance to gift deed. Therefore, assuming that such gift deed was executed in favour of Supdabai, in absence of evidence regarding acceptance of gift during her lifetime or parting possession by donor, the right of Supdabai cannot be established. Consequently, plaintiff cannot raise any claim converse to claim of defendant whose names are consistently appearing in mutation record.

9. Appellate Court has also recorded finding that the suit is barred by limitation and same is bad for non joinder of necessary parties. There is nothing on record that plaintiff was not aware about exclusion of her right. In fact, plaintiff has brought on record sale deed dated 21.12.1992, showing defendant No.2 has sold out land gut No.46/2A to defendant No.7. Similarly, there are other sale deeds which were never assailed by mother of plaintiff. Concurrent findings of the facts recorded by Courts below cannot be disturbed unless the perversity is brought on record. The Supreme Court in case of **Gurdev Kaur Vs. Kaki and Ors AIR 2006 SCC 1975** observed as under:

“The language used in amended Section specifically incorporates the words as ‘substantial question

of law' which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted Second Appeal to become 'third trial of facts' or 'one more dice in gamble'

10. In light of aforesaid exposition of law, no case is made out to interfere in the concurrent judgment. Since, appeal sans substantial questions of law, stands **dismissed**. Pending civil application, if any, also stands **disposed of**.

(S. G. CHAPALGAONKAR, J.)

Rushikesh/2025

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