



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

**SECOND APPEAL NO. 400 OF 2024
WITH CIVIL APPLICATION NO. 12735 OF 2024**

Vaijinath Balasaheb Nirpane

VERSUS

Sudamatibai Babasaheb Nirpane And Ors

Ms. Anjali Dube, Advocate for Appellant

CORAM : R. M. JOSHI, J.

DATE : 22 July, 2025

PER COURT :-

1. Heard learned counsel for the Appellant.
2. Learned counsel for Appellant has made several submissions and sought to convince this Court that substantial question of law is involved in this case. It is her contention that the Trial Court as well as the First Appellate Court have failed to take into consideration the case sought to be made out by the plaintiff with regard to the property of the minor being sold without permission of the Court. It further sought to contend that since the transactions is void ab initio, it is open for challenge by the plaintiff at any stage. It is further contended that the evidence with regard to the age of plaintiff was not produced before Trial Court and hence Appellate Court ought to have relegated suit before the Trial Court.

3. Appellant/plaintiff filed suit for declaration and cancellation of sale deed dated 17.10.2006, executed by defendant No. 1 in favour of defendant No. 3. Defendant Nos. 1 and 2 are parents of the plaintiff and defendant No. 3 is bonafide purchase of suit property for value. Perusal of the record further indicates that the issue of bar of limitation in filing of suit was duly framed. The judgment passed by the First Appellate Court indicates that it was a case of the plaintiff on the basis of evidence produced by him before the First Appellate Court that his date of birth is 06.05.1990. The contention of plaintiff himself before the Appellate Court came to be accepted. Order XLI Rule 24 of the Code of Civil Procedure, enables the Appellate Court to pass judgment if there is sufficient material evidence available on record. The order of remand can be passed only in cases covered by Order XLI Rule 23 and 23A. Once the evidence led by appellant is not in dispute, it was always open for the Appellate Court to pass judgment. The consideration of evidence led by plaintiff/Appellant before First Appellate Court, by the said Court is perfectly justified. Since, there was sufficient evidence on record to pronounce judgment, it was not case for remand.

4. Plaintiff admittedly had attained age of majority on 05.5.2008. Further admittedly suit has been filed on 09.07.2012. The suit, therefore, is

clearly barred by limitation and on this ground it is held to be not maintainable. This finding of fact recorded by the First Appellate Court is in consonance with the evidence on record. Since the suit itself is not maintainable, question of going into other contentions of plaintiff does not arise. Hence, concurrent judgments of both Courts deserve no interference. This appeal does not involve any substantial question of law.

5. Hence, Second Appeal stands dismissed. Pending Civil Application stands disposed of.

(R. M. JOSHI, J.)

bsj