



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

69 CRA NO. 179 OF 2024

Jayashri w/o Chandrakant @ Chandu More,
Age; 40 years, Occ; Household,
R/o; Pimpala Bhatya, Tal. Purna, Dist. Parbhani
Presently R/o. Vishnu Nagar, Nanded
Tq. & Dist. Nanded.

...APPLICANT
(Original Defendant No. 2)

VERSUS

1. Narjoji @ Gangadhar S/O Janardhan More,
Age; 75 YEARS, Occ; Agriculture,
R/o. Pimpala Bhatya, Tq. Purna,
Dist. Parbhani.
2. Vyankati s/o Narhoji More,
Age; 41 years, Occ; Agriculture,
R/o. Pimpala Bhatya, Tal. Purna,
District. Parbhani.
3. Mira w/o Vijay Kadam,
Age; 38 years, Occ; Household & Agriculture,
R/o. Shivaji Nagar, Limbgaon,
Tq. And Dist. Nanded.
4. Saraswatibai w/o Narhoji More,
Age; 60 years, Occ; Agriculture,
R/o; Pimpala Bhatya, Tq. Purna,
District; Parbhani.
5. Chandu s/o Narhoji More,
Age; 46 years, Occ; Agriculture,
R/o; Pimpala, Bhatya, Tq. Purna,
District; Parbhani.

...RESPONDENTS
(Original Plaintiffs)

...RESPONDENT
(Original Defendant No. 1)

...
Advocate for the Applicant : Mr. Kulkarni Ashutosh S.
Advocate for Respondent Nos. 1 to 4 : Mr. Vikram S. Kadam
...

**CORAM : S. G. CHAPALGAONKAR, J.
Dated : 24.03.2025**

PER COURT :-

1. Applicant /Original defendant No. 2 in Regular Civil Suit No. 4 of 2023 pending before Civil Judge, Junior Division, Purna, District Parbhani impugns order dated 30.08.2024 passed below Exh. 14, by which a prayer of applicant for rejection of plaint invoking Order VII Rule 11 of Code of Civil Procedure has been declined.

2. Mr. Ashutosh S. Kulkarni, learned Advocate appearing for applicant invites attention of this Court to contents of plaint stating that that plaintiff is seeking cancellation of gift deed No. 1278 of 2022 dated 27.06.2022 executed by defendant No. 1 in favour of defendant No. 2.

3. In that view of the matter, suit could have been valued in view of Section 6 (iv) (ha) of Maharashtra Court Fees Act, which states thus :

"In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any movable or immovable property is void – (one half) or *ad valorem* fee leviable on the value of the property."

4. He points out that in light of aforesaid provisions, an application was moved before trial Court for rejection of plaint as suit is not properly valued, however, trial Court observed that gift deed is without consideration.

5. According to him, such observations are contrary to record. He invites attention of this Court to registered gift deed dated 27.06.2022, wherein, valuation of property is shown to Rs. 20 Lakhs and 2 thousand and payment of stamp duty of Rs. 20,02,2000/-. He would therefore urge that impugned order is based on incorrect appreciation of pleadings and material on record and liable to be quashed and set aside.

6. Per-contra, Mr. Kadam, learned Advocate appearing for respondents/plaintiffs Nos. 1 to 4 submits that plaintiffs are not party to gift deed. Suit is filed seeking decree of partition. Therefore, relief of

cancellation of gift deed is claimed without its consequential in nature.

7. Having considered submissions advanced, it is apparent that suit is instituted predominantly seeking declaration that suit property is ancestral property and gift deed dated 27.06.2022 is without authority.

8. Pertinently, plaintiffs are not party to gift deed. Cancellation of gift deed is sought in consequence to prayer of declaration. Looking to conspectus of entire suit, it is difficult to hold at this stage that transaction under gift would govern by Section 6 (iv) (ha) as pointed out by Mr. Kulkarni. Therefore, even assuming that gift deed was for consideration, valuation of suit made cannot be defaulted.

9. Mr. Kadam, points out that declaration as claimed would be govern by Clause (j) of Clause (iv) of Section 6 of Maharashtra Court fees act. The contention of Mr. Kadam is acceptable in the facts of the case. In that view of the matter, although reasoning as adopted by trial Court in impugned order may not be countenanced and ultimately has appears to be correct.

10. In that view of the matter, no interference is called for in present Civil Revision Application, however defendant No. 2 would be at liberty to raise issue as to valuation and Court fees before trial Court and trial Court may decide same by framing appropriate issue.

11. Civil Revision Application stands disposed off.

(S. G. CHAPALGAONKAR)
JUDGE