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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 288 OF 2017

Vivek Vidhyadhar Jatkar
(Kulkarni)

.....Appellant

Vs.

Jath Medical Association (Trust)
Thr. President Dr. Manohar Sivappa
Modi and ors

.....Respondents

Mr. Aniruddha A. Garge i/b Mr. Jitendra Oak for the appellant

CORAM : GAURI GODSE, J.

DATE : 10th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellant. This second appeal is filed by the original plaintiff to challenge the judgment and decree passed by the first Appellate Court. In a first appeal preferred by defendant nos. 1 and 2, the trial Court's decree in favour of the plaintiff is set aside. The trial Court had decreed the plaintiff's suit and granted a declaration that the gift deed executed by plaintiff's grandfather in favour of defendant nos. 1 and 2 was illegal and null and void. The trial

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Court thus granted a decree for declaration and possession after removal of construction on the suit property. The trial Court directs defendant nos. 1 and 2 to remove the construction and hand over possession of the suit property to the plaintiff.

2. The first Appellate Court reversed the trial Court's decree by holding that the suit was barred by limitation and the plaintiff failed to prove that the gift deed and the power of attorney executed by plaintiff's father in favour of plaintiff's grandfather was void.

3. Learned counsel for the appellant submits that in view of Section 6 read with Article 65 of The Limitation Act, 1963, the plaintiff's suit was well within limitation. He submits that the plaintiff had attained majority on 4th December 1999. He submits that the suit for declaration and possession was filed within 12 years i.e. on 27th August 2004. He thus submits that since the suit was for possession, Article 65 would be applicable and thus, the suit filed within 12 years of attaining majority was well within limitation. He submits that the first Appellate Court has reversed the trial Court's findings on hypothetical observations made in paragraph 39. He submits that the observations of the first Appellate Court that during the lifetime of plaintiff's father and plaintiff's uncle,

they did not challenge the execution of the gift deed is a hypothetical observation. Learned counsel for the appellant thus submits that the second appeal would require consideration on the point of limitation as the same raises substantial question of law.

4. I have perused the reasons recorded by both the Courts. The gift deed is executed on 9th April 1997 by the plaintiff's grandfather. The sons of the plaintiff's grandfather had executed power of attorney in favour of the plaintiff's grandfather i.e. Vyanktesh. The first Appellate Court has recorded that the gift deed was executed on the ground that Vyanktesh and his sons were co-owners who gifted the suit property to defendant nos. 1 and 2. It is not in dispute that the plaintiff's father during his lifetime never challenged the power of attorney or the gift deed. The plaintiff attained majority on 4th December 1999 and he filed suit on 27th August 2004 for challenging the sale deed and the power of attorney and sought possession of the suit property.

5. The plaintiff does not claim any exclusive right in the suit property. However, by completely ignoring the pleadings, the trial Court granted a decree against defendant nos. 1 and 2 to remove the construction and hand over possession of the suit property to the

plaintiff.

6. The plaintiff claims that the suit property was a joint family property and thus, the plaintiff has a right to challenge the gift deed on attaining majority. The plaintiff claims right in the suit property through his father. The first Appellate Court after examining the evidence including the revenue record, held that the suit property was standing in the name of Vyanktesh and his sons, having their independent shares.

7. The first Appellate Court by examining the documentary and oral evidence on record held that the plaintiff failed to produce any evidence to show that the suit property was an undivided and coparcenary property of the plaintiff and defendant nos. 4 to 9 at the time of execution of the gift deed. The first Appellate Court further held that the document of gift deed discloses that Vyanktesh acted as a power of attorney of Subhash, Vishram Vidhyadhar and Dwarkabai. The plaintiff claims through Vidhyadhar, i.e. one of the sons of Vyanktesh. The first Appellate Court further held that the suit for declaration is not filed within three years from the date of attaining majority.

8. The suit is filed for cancellation of the gift deed by declaring that the gift deed executed by Vyanktesh as power of attorney holder of his son is illegal. However, there is no challenge to the power of attorney; hence, the plaintiff was required to establish his right in the suit property on the date of execution of the gift deed. It is not the plaintiff's case that the gift deed was executed by his father as his guardian. Thus, for seeking declaration, the suit was required to be filed within three years, from the date when the right to sue first accrued in view of Article 58. Therefore, the suit should have been filed within three years from the date of the plaintiff attaining majority, in view of Section 6 of the Limitation Act. The prayer for cancellation of the gift deed will be governed by Article 59, therefore, for relief of cancellation of gift deed the period of limitation would be three years when the facts entitling the plaintiff to have the document cancelled first became known to him. The cause of action pleaded is attaining majority in December 1999. Therefore, suit filed beyond three years of attaining majority is barred by limitation. Since the suit is filed for declaration and cancellation of gift deed and the consequential prayer is for possession, the first Appellate Court rightly held that Article 65 is not applicable. Hence, in view of Section 6 of the Limitation Act, the suit

should have been filed within three years from the date of attaining majority.

9. In view of the aforesaid facts, the suit cannot be held within limitation. Hence, the first Appellate Court has rightly set aside the findings recorded by the trial Court on the point of limitation. In view of the aforesaid facts, the suit was barred by limitation in view of Articles 58 and 59 read with Section 6 of the Limitation Act.

10. Even on merits, the first Appellate Court's findings that the plaintiff had no right on the date of execution of the gift deed cannot be faulted. Nothing is shown to support of the plaintiff's contention that the plaintiff had any right to challenge the gift deed.

11. Hence, the arguments raised on behalf of the appellant would not require any consideration by this Court.

12. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]