

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.11261 OF 2025**

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Madhav Girish Bhate,
Age: 32 years, Occ: Business, 2. Dr. Smt. Swapna Girish Bhate,
Age 59, both professions and medical,
Both are Residing at Pushparaj Building,
Pushparaj Chowk, Miraj Road, Sangli. | <p>..Petitioners
(Ori. Plaintiff)</p> |
| Versus | |
| <ol style="list-style-type: none"> 1. Rajendra Shivaji Bhate,
Age 55, profession: trade and agriculture, 2. Siddharth Rajendra Bhate,
Age 26, both by profession and trade,
Resident of 5, High School Road, Wakharbag,
Sangli, Tal. Miraj, Dist. Sangli. | <p>..Respondents
(Ori. Defendants)</p> |

...

Mr. Balwant Salunkhe, Advocate for Petitioners.
Mr. Tejpal S. Ingale a/w Mrs. Vrushali Vilankar, Mr. Saurabh Patil a/w
Mr. Aditya R. Patil, Advocate for Respondents.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th NOVEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The present Writ Petition takes exception to order dated 31.01.2025 passed by Civil Judge Senior Division, Sangli below Exhibit-105 in Special Civil Suit No.132/2014, by which petitioners' application seeking amendment in plaint has been rejected.
3. The petitioners are original plaintiffs in Special Civil Suit No.132/2014. The suit is filed seeking declaration that gift deeds

dated 15.12.2010 and 08.07.2011 in respect of suit properties executed by late Girish in favour of defendant nos.1 and 2 are illegal, invalid and not binding on right of plaintiffs and also claimed relief of perpetual injunction. After 10 years of institution of aforesaid suit, plaintiffs filed application below Exhibit-105 seeking amendment in plaint contending that on 08.07.2011, defendants got executed similar gift deed in respect of plot no.21. The plaintiffs had no knowledge about such gift deed and recently defendants disclosed about the same in their written statement filed in Regular Civil Suit No.61/2023. Immediately after getting knowledge, he has filed application seeking amendment and seeks declaration against said gift deed. The Trial Court rejected application firstly for reason that application is filed after 10 years of institution of suit. Secondly, plaintiffs had sufficient knowledge of gift deeds since 2013, therefore, claim is barred by limitation.

4. Mr. Balwant Salunkhe, learned Advocate appearing for petitioners submits that Trial Court should not have considered merit of proposed amendment. The issue of limitation could not have been framed in suit and after granting opportunity to parties, appropriate decision could have been taken. The right of plaintiffs to seek declaration could not have been foreclosed at threshold.

5. Per contra, Mr. Tejpal Ingale, learned Advocate appearing for respondents would submit that on face of it, petitioners have lost their

rights to seek declaration against gift deed executed on 08.07.2011. The petitioners had unsuccessfully challenged mutation entry recorded in deference to gift before Revenue Authorities. However, without disclosing the same, present application is filed. Mr. Ingale would rely upon observations of Supreme Court in cases of *Radhika Devi Vs. Bajrangi Singh and Others*¹, *L.C. Hanumanthappa Vs. H. B. Shivakumar*² and *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Others*³.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, apparently, Special Civil Suit No.132/2014 is pending for last 12 years. The plaintiffs have sought declaration against gift deeds executed by late Girish in years 2010 and 2011 in favour of defendant nos.1 and 2. Undisputedly, on 02.09.2013 petitioners had challenged mutation entries taken in name of defendants based on gift deeds, which are subject matter of challenge in suit as well as gift deed dated 08.07.2011 in respect of plot no.21. They had sought cancellation of those mutation entries. On rejection of such objection, petitioners had filed Appeal before Sub Divisional Officer, which has been rejected on 19.06.2017. It is apparent that, since 02.09.2013 plaintiffs are litigating against mutation entries taken in deference to gift deeds of plot nos.20 and 21 in name of defendant nos.1 and 2. It is, therefore, clear that even before institution of

¹ (1996) 7 SCC 486.

² (2016) 1 SCC 332.

³ (2022) 16 SCC 1.

Special Civil Suit No.132/2014, plaintiffs were aware about gift deed dated 08.07.2011 and seeks to incorporate challenge to the same by way of amendment. The application for amendment is filed after 10 years of institution of suit.

7. Section 58 of Limitation Act provides period of three years for seeking declaration, which is expired in year 2016.

8. It is trite that, if amendment in plaint is sought in respect of time barred claim, it cannot be allowed. In present case, cause of action to raise challenge or seek declaration against gift deed arose in year 2011 or 2013. In this background, observations of Supreme Court in case of ***Radhika Devi*** (supra) would be relevant, which reads thus:

“The ratio therein squarely applies to a fact situation where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. In the present case, the gift deed was executed and registered as early as July 28, 1978 which is a notice to everyone. Even after filing of the written statement, for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint. The High Court, therefore, was right in refusing to grant permission to amend the plaint.”

9. Similarly, in case of ***Life Insurance Corporation of India*** (supra), Supreme Court in concluding paragraphs observed that amendment to avoid multiplicity of proceeding can be allowed, if amendment does not raise time barred claim, resulting in divesting of other side of valuable accrued right or where by way of amendment time barred

claim is sought to be introduced. It is true that, in appropriate cases question as to Limitation Act can be kept open while permitting amendment. However, in present case, from documents tendered by plaintiffs themselves, it is crystal clear that plaintiffs were aware about existence of gift deed of 2011. They had raised challenge to mutation entry in year 2013. However, filed application for amendment in present suit in year 2024 to seek declaration against the same.

10. In this backdrop, there is no reason to permit amendment of time barred claim. In result, no jurisdictional error is discerned in impugned order. Hence, Writ petition stands rejected.

11. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE