

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
SECOND APPEAL NO.529 OF 2018**

1. Vasudev Govind Joshi-deceased-heirs

a. Smt. Malati Vasudev Joshi,
Age 70 years, Occu: Household,
R/o. Tilak Path, Gadhinglaj,
Dist. Kolhapur.

b. Chandrashekhar Vasudev Joshi
Age 40 years, Occu: Service,
R/o. Tilak Path, Gadhinglaj,
Dist. Kolhapur.

c. Shirish Vasudev Joshi,
Age 45 years, Occu: Contractor,
R/o. "Girija" Govt. Colony,
Vishrambag, Sangli.

..Appellants.

Versus

a. Vasant Atmaram Jadhav,
Age: 62 years, Occu: Service,
R/o. Gadhinglaj, Taluka Gadhinglaj,
Dist. Kolhapur.

2. Ramesh Atmaram Jadhav,
Age: 55 years, Occu: Business,
R/o. Gadhinglaj, Taluka Gadhinglaj,
Dist. Kolhapur.

3. Vaibhav Muralidhar Jadhav,
Age: 35 years, Occu: Service,
R/o. Gadhinglaj, Taluka Gadhinglaj,
Dist. Kolhapur.

4. Prakash Muralidhar Jadhav,
Age: 45 years, Occu: Pleader,
R/o. H. No.434,
Mirajkar Tikati, Kolhapur.

..Respondents

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Mr. Ajay Rajenimbalkar a/w Mr. S. S. Patwardhan, Advocate for Appellants.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 10th OCTOBER, 2025.

FINAL ORDER:-

1. The appellant/original plaintiff impugns judgment and decree dated 11.04.2017 passed in Regular Civil Appeal No.40/2004 by District Judge, Gadhinglaj (after remand), thereby reversing judgment and decree dated 19.03.2004 passed in Regular Civil Suit No.113/2000 by Civil Judge Junior Division, Gadhinglaj.

2. The appellant/plaintiff filed suit seeking relief of reconveyance in terms of conditional sell dated 18.01.1975 and possession in respect of suit property. It is contention of plaintiff that plaintiff was in need of money. The defendants' mother Gangubai Jadhav agreed to help him. On 18.01.1975 document of mortgage by conditional sell was executed in favour of defendants for period of five years. It was agreed to execute reconveyance deed within further period of five year. Gangubai died in year 1983. When plaintiff issued notice dated 28.02.2000 to defendants for execution of reconveyance deed, defendants refused. Hence, suit filed for direction to execute reconveyance deed and delivery of possession of suit property.

3. The defendants refuted plaintiff's claim by filing written statement. They admitted execution of document contending that document was sell with condition to repurchase within period of ten years. The plaintiff failed to file suit within limitation period. As such he has lost right.

4. The Trial Court framed issues based on pleading of parties and decreed suit. The defendants filed Appeal before District Judge. The District Judge set aside decree passed by Trial Court and dismissed suit on ground that document in question was not mortgage deed, but it was sale with condition to repurchase. As such, suit is barred by limitation, in view of Article 61 of Limitation Act.

5. Mr. Patwardhan, learned Advocate appearing for appellants submits that Appellate Court has failed to appreciate nature of transaction. The intention of parties was to create mortgage. Similarly, point of limitation is wrongly decided.

6. Perusal of reasons by Appellate Court would show that upon appreciation of recitals of document Exhibit-31, it is observed that it was agreed between plaintiff and defendants that after five years of execution of said document and within five years thereafter, plaintiff is ready to repay amount of Rs.8000/- to defendants and then Gangubai i.e. mother of defendants has to execute reconveyance deed in favour of plaintiff. Admittedly, suit property continued in possession of Gangubai. The Court has further observed that even from subsequent conduct of parties, it can be observed that parties to the contract had intention of sell with condition to repurchase. The condition of repurchase is specifically mentioned in terms of Section 58(c) of Transfer of Property Act in document itself. Even it is not pleading of

plaintiff that it was a case of mortgage. They are specifically coming with case that it was conditional sell.

7. In light of aforesaid observations District Judge has rightly concluded that suit is barred by limitation.

8. It can be observed that plaintiff has specifically approached Trial Court for decree of reconveyance as agreed under document dated 18.01.1975. The suit is not instituted for redemption of mortgage. If suit is for reconveyance, suit ought to have been filed within limitation period available for reconveyance of sale deed. The present suit is instituted on 29.04.2000. The right to get reconveyance was accrued immediately on expiry of 5th year of execution of document and it was available for five years period on expiry of initial period of five years for repayment of amount. Therefore, limitation period for filing suit for reconveyance needs to be counted from 17.01.1985. The suit is filed after 15 years, which is clearly barred by limitation.

9. In result, no substantial question of law arises for consideration in this Appeal. Hence, Second Appeal stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE