

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.227 OF 2025
WITH
INTERIM APPLICATION NO.3776 OF 2025**

1. Azad Chand Sayyad,
Age: 71 years, Occu.: Service,
R/o. H. No.96, 'A' Ward, Malkapur,
Tal. Shahuwadi, Dist. Kolhapur.
2. Assif Chand Sayyad,
Age: 69 Years, Occu.: Service,
R/o. As Above.
3. Kadar Chand Sayyad,
Age: 66 Years, Occu.: Service,
R/o. As above.
4. Ramjan Mohamad Hanif Sayyad,
Age: 60 Years, Occu.: Business,
R/o. H. No.95, 'A' Ward, Malkapur,
Tal. Shahuwadi, Dist. Kolhapur.
5. Ibrahim Hussien Sayyad,
(Since deceased through LRs.),
 - 5a) Mehabub Ebrahim Sayyad,
Age: 55 Years, Occu.: Business,
R/o. Malkapur, Tal. Shahuwadi,
Dist. Kolhapur.
 - 5b) Dastgir Ebrahim Sayyad,
Age: 53 Years, Occu.: Business,
R/o. As above.
 - 5c) Dilawar Ebrahim Sayyad,
Age: 50 Years, Occu.: Business,
R/o. As above.

.....Appellants/
Applicants.

Vs.

Hajirabi Harun Shaikh (Deceased),
(Since deceased Through LRs.),

1. Nagma Gulab Madar,
Age: 60 Years, Occu.: Household,
R/o. 1529, 'D' Ward, Kolhapur.
2. Surrya Shikandar Shaikh,
Age: 58 Years, Occu.: Household,
R/o. As above.
3. Vahida Anwar Kagadi,
Age: 55 Years, Occu.: Household,
R/o. As above.
4. Imtiyaj Harun Shaikh,
Age: 52 Years, Occu.: Business,
R/o. Beghar Vasahat, Sahuwadi,
Tal. Shahuwadi, Dist. Kolhapur.Respondents

Mr. Ajay Rajenimbalkar, for the Appellants/Applicants.

MR. F. G. Pathan, for the Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 29th SEPTEMBER 2025

JUDGMENT :-

1. Appellants/original defendants impugns Judgment and Decree dated 5th February 2024 passed by learned District Judge, Kolhapur in Regular Civil Appeal No.32 of 2014, thereby modifying Judgment and Decree dated 31st December 2013 passed by learned Civil Judge, Senior Division, Kolhapur in Special Civil Suit No.294 of 2010. Respondents/plaintiffs instituted Special Civil Suit No.294 of 2010 seeking relief of declaration and perpetual injunction in respect of

House property Nos.94, 95 and 96 situated at C.T.S.No.60/2. It is contention of plaintiffs that plaintiff's husband Harun Shaikh purchased the suit property under registered sale deed dated 10th June 1959. He has raised construction over the suit property. Harun died in the year 1973. His wife Hajirabi was required to go out of town. Defendants took undue advantage of illiteracy and situation of Hajirabi and got entered their names in record of rights of suit property. They forcibly took possession in the year 1995 and refused to hand over possession of suit property in response to legal notice dated 15th September 2005 issued by plaintiff, which was the cause of action to institute suit.

2. Defendants refuted plaintiff's claim contending that Harun Shaikh had sold suit property to them by unregistered sale deed dated 28th April 1963 for consideration of Rs.95/-. Since they were put into possession, they have constructed three separate houses on suit property. In alternative, defendants claimed their ownership by way of adverse possession. The trial Court framed issues, recorded evidence of parties and dismissed the suit holding that plaintiff failed to prove her ownership, whereas defendants acquired title over suit

property by way of adverse possession. Pertinently, trial Court observed in paragraph No.14 of judgment that unregistered sale deed dated 28th April 1963 relied by defendants to claim their ownership is doubtful document and cannot be relied upon.

3. Aggrieved plaintiff filed Regular Civil Appeal No.32 of 2014 before learned District Judge, Kolhapur, which came to be allowed. It has been declared that sale deed dated 28th April 1963 is sham and bogus document. Defendants are directed to deliver possession of suit property to plaintiff.

4. Learned Advocate appearing for Appellants would submit that original plaintiff admitted that she was residing with her son elsewhere since 1963. In that case, suit instituted by her was barred by limitation. The Appellate Court erred in allowing appeal and setting aside findings of trial Court on the point of limitation. According to him, sale dated 28th April 1963 executed by Harun could have been accepted for collateral purpose, even in absence of registration. In alternate, Appellate Court could have maintained findings of trial Court that defendants acquired title by way of adverse possession.

5. Per contra, learned Advocate appearing for Respondents submits that trial Court as well as Appellate Court held that sale deed dated 28th April 1963 is doubtful document. However, defendants cannot claim adverse possession once they put the theory of their own title based on sale deed dated 28th April 1963.

6. Having considered submissions advanced, it can be observed that title of plaintiff is not disputed by defendants. However, they assert their own title on the basis of sale deed executed by Harun Shaikh in the year 1963. The trial Court observed that sale deed dated 28th April 1963 do not depict essential particulars like date of sale of stamp paper, its number and no presumption can be drawn only because document is more than 30 years old. The Appellate Court also recorded that transaction under the sale deed of 1963 is unreliable. Further, it is unregistered document. Although, document alleged to have been executed on 28th April 1963, possession of Harun is continuously seen till 1968. The Appellate Court observed that Harun had purchased said property in the year 1959 for consideration of Rs.375/-. Hence, it cannot be believed that in the year 1963, he sold the same property for consideration of

Rs.95/-. The Appellate Court observed that plaintiffs being legal heirs of Hajirabi have established their title to suit property, whereas defendants failed to establish their title either by way of alleged sale deed dated 28th April 1963 or adverse possession.

7. No infirmity can be found in concurrent findings of facts recorded by Courts below on the point of title of plaintiff. Defendants took a plea that they acquired title by way of adverse possession, as they started construction on suit property in the year 1985 and suit is not filed within 12 years. The Appellate Court has rightly dealt with issue of limitation in reference to Article 65 of Limitation Act. In present case, plaintiff claimed her ownership over the suit property being heir of Harun. The defendants had also claimed ownership on the basis of unregistered sale deed dated 28th April 1963. Once defendants took a plea of title over suit property, they are precluded from taking plea of adverse possession. Even otherwise, limitation would start from the date when possession of defendants became adverse to title of plaintiff. There is no specific pleading in written statement as to when the possession of defendants became adverse to plaintiff. Apparently, when defendants denied plaintiff's claim

while replying legal notice in the year 1995, limitation period will start. Apparently, present suit is filed within 10 years from the date of denial of title by defendants.

8. The Supreme Court of India in case of ***D. N. Venkatarayappa & Ors. Vs. State of Karnataka & Ors.***,¹ observed that to make out a case of adverse possession, it is for the defendant to establish his *mens rea* adverse to title of plaintiff. Merely continuous possession without animus against title of plaintiff would not constitute adverse possession. Following observations of Supreme Court are relevant in the facts and circumstances of this case:

"Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person, who claims adverse possession should show :

- (a) on what date he came into possession,*
- (b) what was the nature of his possession,*
- (c) whether the factum of possession was known to the other party,*
- (d) how long his possession has continued, and*

¹ (1997) 7 SCC 567.

(e) *his possession was open and undisturbed.*

A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

9. In light of aforesaid exposition of law, when plaintiffs have failed to prove their title, in absence of specific plea of adverse possession and evidence to show sufficient animus to establish hostile title, defendants' case is rightly discarded. In absence of substantial question of law for consideration, Second Appeal is dismissed.

10. In view of dismissal of Second Appeal, nothing survives for further consideration in Interim Application No.3776 of 2025 and same shall also stand disposed of.

(S. G. CHAPALGAONKAR, J.)

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