



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.112/2023

APPELLANT :
(On R.A.)

Natthu Damaji Bondhare,
aged about 82 years, Occu. : Cultivation,
R/o Vichoda (Bu.), Post Padoli,
Tahsil and District Chandrapur.

(Original Plaintiff/Appellant on R.A.)

...VERSUS...

RESPONDENTS : 1. Smt. Parvatabai Baburao Mandaokar,
(On R.A.) Aged about 81 years, Occu. : Nil.

2. Purushottam Baburao Mandaokar,
aged about 58 years, Occu. : Service.

Respondent Nos.1 and 2 are R/o
Near Shrikrishna Talkies, Bazar Ward,
Chandrapur.

3. Sau. Kiran Nagaji Hanwate,
aged about 54 years, Occu. : Nil,
R/o Babupeth Ward, Chandrapur,
Tahsil and District Chandrapur.

(Correct Address)

3. Sau. Kiran Nagaji Hanwate,
Age – 54 years, Occ – Nil.
R/o Netaji Nagar, Bapupeth Ward,
Chandrapur.

(Amendment carried out as per
Hon'ble Court on today i.e.
17/06/2025)

4. Pravin Padvekar, aged about 46 years,
occu. : Business, R/o Ekori Ward,
Chandrapur, Tahsil and District Chandrapur.

5. Mohan Sadashio Dongre,
aged about 46 years, occu. : Business,
R/o Jatpura Ward, Chandrapur,
Tahsil and District Chandrapur.
6. Yashpal Devanand Khobragade,
aged about 39 years, occu. : Cultivation.
7. Sagar Devanand Khobragade,
aged about 36 years, occu. : Cultivation,

Respondent Nos.6 and 7 are R/o Jatpura
Ward, Chandrapur, Tahsil and District
Chandrapur.

8. Shamrao Srawanji Nikhare,
aged about Major, Occ. : Cultivation

(Dead through L.Rs.)

L.Rs. of Respondent No.8

- 8(a) Akshay S/o Shamrao Nikhare
Aged about 25 yrs., Occ. Not known,
R/o Plot No.19, Malbar Colony,
Seven Hills, Nagpur.

(Amendment carried out as per
Court's order dt. 3.7.2025)

9. Mina Shamrao Nikhare,
aged about Major, Occ. : Household,
Respondent Nos.8 and 9 are R/o
Ghotepar Ward, Pawani, Tahsil
Pawani, District Bhandara.
10. Udit Ratilal Vora,
aged about Major, Occ. : Business,
R/o Shastrinagar, Chandrapur, Tahsil
and District Chandrapur.

11. Bharat Diwakar Ghosh,
aged about Major, Occ. : Business,
R/o Bengaly Camp, Chandrapur.

(Original Defendants/Respondents
on R.A.)

Mr. S.P Kshirsagar, Advocate for appellant
Mr. Apurv De, Advocate for respondent Nos.1, 4 to 7, 10 and 11
Mr. P.V. Dandwate with Mr. G.G. Nimbalkar, Advocates for L.Rs. of 8 (a) & 9

CORAM : ROHIT W. JOSHI, J.

DATE : 18/11/2025

ORAL ORDER :

1. Notice in the second appeal was issued on 12/09/2023 on the following substantial questions of law :-

“(i) Whether the learned Courts below recorded a right finding in respect of sale deed as valid, specifically when the sale deed was registered on 10/08/1978 ?

“(ii) Whether the decision of Courts below has based on sale deed dated 08/08/1978 and on that basis assuming such sale deed, suit is dismissed and also the appeal, whether such a decision rendered by courts below is sustainable in law ?

“(iii) Whether ground of limitation, as the Court’s below if rightly answered in the negative ?”

2. The appellant is the original plaintiff. The respondents are original defendants. Parties will be hereinafter referred to as “plaintiff and defendants”. The present plaintiff had filed a suit being Regular

Civil Suit No.128/2004, challenging sale-deed dated 08/08/1978 executed by him in favour of the defendant No.1 and her husband. The said sale-deed dated 08/08/1978 is registered on 10/10/1978. The suit property is an agricultural land bearing Survey No.117/2 admeasuring 8.50 acres.

3. It is the case of plaintiff that he had purchased land bearing Survey No.117 admeasuring 18.50 acres under separate sale-deeds dated 15/05/1968 and 10/07/1970. The old Survey Numbers of the suit property are stated to be 126/2 and 128. The suit was initially filed seeking declaration that the defendants did not have any right to disturb possession of the plaintiff over the suit property and that the alleged sale-deed was not binding on the plaintiff. The plaintiff also sought decree for perpetual injunction restraining the defendants from disturbing his possession over the same. The plaintiff has amended the plaint to contend that after the order of temporary injunction was passed against him vide order dated 31/08/2004, the defendants had taken forcible possession of the suit property in the year 2005. However, the plaintiff has not incorporated prayer for possession in the plaint.

4. As against this, the case of defendants is that the defendant No.1 and her husband late Baburao had purchased the suit property from the plaintiff vide sale-deed dated 08/08/1978, which was registered on 10/08/1978. They contended that the sale-deed was

preceded by an agreement of sale dated 28/09/1977. It is contended that the plaintiff has received entire sale consideration as per the sale-deed. The defendant Nos.2 and 3 are son and daughter respectively of defendant No.1. The defendant Nos.1 to 3 sold the suit property to the defendant Nos.4 and 5, who in turn, have sold the same to the defendant Nos.6 and 7. The defendant Nos.1 to 3 claimed ownership over the suit property on the basis of aforesaid sale-deed and further referred to several circumstances to demonstrate that plaintiff was all the while aware about the sale-deed dated 08/08/1978 and had also accepted the same. Reference was made to sub division of Survey No.117 as 117/1 with respect to share of plaintiff and 117/2 with respect to suit property purchased by defendant No.1 and her husband, measurement of land in the year 1986, separate mutation entries, service of notice, in view of acquisition of land on 04/06/1985 and measurement of land in the year 1986.

5. The defendants raised issue of limitation and contended that the suit was liable to be dismissed as barred by limitation.

6. The learned trial Court framed issues in the matter and recorded evidence of rival parties. Parties were heard after the evidence was so recorded. The learned trial Court has found that the evidence of plaintiff was completely unreliable and that the sale transaction was duly proved. It is also held that the plaintiff was not in possession of the

suit property. Even on the point of limitation, the learned trial Court has held that the suit was hopelessly barred by limitation. The learned trial Court has recorded that the plaintiff had stated in his cross-examination that since beginning the suit was filed for recovery of possession. This, according to learned trial Court, was sufficient to establish that the plaintiff was not in possession of the suit property on the date of filing of suit. The learned trial Court also found that the plaintiff admitted his signature on the agreement of sale dated 28/09/1977 during his cross-examination. It was further found that the plaintiff admitted execution of sale-deed with respect to 2 acres land out of old Survey No.126/2 and 6 acres land out of old Survey No.128 in favour of defendant No.1 and her husband (these two Survey Numbers were thereafter renumbered as Survey No.117). The learned trial Court has referred to statement of plaintiff with respect to alleged objection to mutation of the names of defendant No.1 and her husband in the year 1986. It is found that such objection was not raised. However, on the basis of the statement, the learned trial Court has observed that the plaintiff was aware about the sale transaction at least from the year 1986 and yet the suit was filed in the year 2004. It will be pertinent to state that the plaintiff also tried to dispute his signature on the sale-deed. However, the learned trial Court has found that the signatures on the agreement of sale at Exh.72 and sale-deed at Exh.105 had resemblance with each

other. It is further recorded that since the fact of execution of sale-deed was subsequently admitted, the question of disputing the signatures did not arise. In the context of disputing signatures, the plaintiff has stated that he had taken loan from husband of defendant No.1, who had forced him to execute the sale-deed dated 08/08/1978. The plaintiff has further stated that he was forcibly taken to the office of Sub Registrar on 08/08/1978, however, the Registrar refused to register the sale-deed since the suit property was held in occupancy Class-II rights. It is thus clear that the plaintiff cannot dispute his signatures over the sale-deed. As regards the contention of plaintiff that the sale-deed was bad in law since the suit property was held as occupant Class-II, the learned trial Court did not entertain the contention for want of pleadings. In light of such findings, the learned trial Court dismissed the suit filed by the plaintiff on merits and also on the point of limitation.

7. Aggrieved by dismissal of suit, the plaintiff preferred first appeal being Regular Civil Appeal No.107/2008, which came to be dismissed vide judgment and decree dated 05/03/2020. The learned first Appellate Court has re-appreciated the evidence on record and has concurred with the findings recorded by the learned trial Court. A perusal of findings recorded by the learned first Appellate Court will demonstrate that the evidence is properly appreciated and dealt with.

8. As regards the contention with respect to suit property being held in occupancy Class-II, the learned first Appellate Court found that the contention was raised without pleadings and further recorded that the plaintiff himself had purchased the land while it was held in occupancy Class-II and therefore, the sale-deed in favour of the defendant No.1 and her husband could not be questioned by him on the said ground, particularly when the land was not received by the plaintiff under any grant from the Government and was also not held by him as a Government lessor.

9. Being aggrieved by the aforesaid concurrent decrees, the present second appeal is filed. As stated above, three substantial questions of law have been framed in the present appeal.

10. **Substantial Question of Law No.1:-** The sale-deed is executed on 08/08/1978. It is registered on 10/08/1978. Section 23 of the Registration Act, 1908 provides for outer limit of four months for registration of documents from the date of their execution. In view of the above, sale-deed dated 08/08/1978 cannot be said to be bad in law only because it is registered on 10/08/1978.

11. **Substantial Question of Law No.2 :-** Execution of sale-deed cannot be doubted, it is rather admitted by the plaintiff. The plaintiff tried to make out a case that the sale-deed was executed under pressure from husband of defendant No.1, since he had borrowed money from

him. The plaintiff has utterly failed to prove the said contention, as is apparent from the findings recorded by both the learned Courts on meticulous examination of the evidence on record. There are several admissions, which are referred by both the learned Courts, which are sufficient to discard the contention of the plaintiff with respect to execution of sale-deed. The plaintiff was also not consistent with his stand in this regard. Having come up with a contention that he had not executed sale-deed, he also tried to contend that sale-deed was got executed under pressure. The learned Courts have rightly discarded the evidence of the plaintiff. Mr. Kshirsagar, learned Advocate has further placed placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *K. Laxmanan Vs. Thekkayil Padmini and others*, reported in *2009 (3) Mh.L.J. 510* to contend that the burden of proving fraud was wrongly cast on the plaintiff.

This judgment deals with proof of Wills. It is held that when suspicious circumstances surround a Will, the burden of clearing the same lies on the proponent. With respect to the ratio of said judgment, it is not applicable to the facts of the present case. In the present case there are clear admissions on the part of the plaintiff to suggest genuineness of the sale-deed and that it was all throughout acted upon. Likewise, it is well settled that there is a presumption of genuineness with respect to registered sale-deed. It must also be stated

that at times issue of burden is rendered academic after both sides lead evidence in the matter. In the case at hand, the plaintiff has led evidence in the suit, which does not inspire confidence and rather the admissions of the plaintiff are by themselves sufficient to dismiss the suit on merits.

12. **Substantial Question of Law No.3 :-** Although this substantial question of law pertains limitation, answer to the question will also have bearing on merits of the matter, inasmuch as the evidence on record clearly establishes that the plaintiff was all the while aware about the sale transaction and that the evidence had all throughout acted on the sale transaction and yet the plaintiff did not take any effective steps to challenge the sale-deed for inordinately long period of 26 years. As stated above, the learned trial Court has recorded a clear findings of fact regarding execution of agreement of sale dated 28/09/1977, followed by execution of sale-deed dated 08/08/1978. It is also found that the total land which was initially numbered as Survey No.117 was sub divided into two parts as Survey Nos.117/1 and 117/2, in view of registration of sale-deed in favour of defendant No.1 and her husband. The plaintiff's statement that the suit was filed initially for reclaiming the possession suggests that possession was not taken from him forcibly after rejection of application for grant of temporary injunction as pleaded in the plaint and as such it will have to be held that possession delivered earlier, as is mentioned in the sale-deed. The

notice with respect to acquisition of land in the year 1985 and notice of measurement of the year 1986 also show knowledge of acquiescence of the plaintiff in the sale transaction. The suit which is filed in the year 2004 is clearly barred by limitation.

13. Mr. Kshirsagar, learned Advocate for the appellant contented that since the suit property was held as occupant Class-II and that the sale-deed was executed without prior permission from the Government, the sale-deed is void and therefore, question of limitation will not arise. In support of this contention, he has placed reliance on the judgments in the matter of *Govindrao Shankarrao Reddy Vs. Rukminibai w/o Vithal Reddy and others*, reported in *2009 (2) Mh.L.J. 583* and *Smt. Jaikumari Amarbahadursingh and others Vs. State of Maharashtra, through the Secretary Revenue and Forest Department and another*, reported in *2009 (1) ALL MR 343*.

14. Both these judgments do not support the contention of the appellant. In the matter of *Govindrao Shankarrao Reddy* (supra), the Hon'ble Supreme Court has held that revenue documents cannot be said to be documents of title. This legal position cannot be disputed. However, the ratio of the said case does not take the case of the appellant any further. In the matter of *Smt. Jaikumari Amarbahadursingh* (supra) this Court has by placing reliance on Sections 39 and 72 of the Maharashtra Land Revenue Code, 1966 held

that the State Government shall have first charge over property for recovery of an unearned income. The ratio of the said judgment cannot be applied to the facts of the present case.

15. In the light of the reasons recorded above, the substantial questions of law framed while issuing notice in the appeal are answered in favour of the respondents/defendants and against the appellant/plaintiff. Second Appeal is, therefore, dismissed with costs.

(ROHIT W. JOSHI, J.)