

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

SECOND APPEAL NO.277/2025

Prathmesh s/o Ramkrushna Ghanot
...Versus...
Ganesh s/o Janrao Ghanot and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. V.G. Lohia and Mr. R.D. Narkhede, Advocates for appellant

CORAM : ROHIT W. JOSHI, J.
DATE : 07/10/2025

1. The present second appeal is filed by the original plaintiff who has filed the suit seeking a declaration that order passed by the Senior Citizen Tribunal under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short hereinafter referred to as "Senior Citizens Act") and subsequent order dismissing his appeal challenging the said order are without jurisdiction and not binding upon him. He has also prayed for a declaration that he is owner of the suit property on the basis of registered Gift-deed dated 04/06/2019 executed in his favour by his grandmother Sumanbai Eknath Ghanot. The plaintiff has also challenged Will dated 06/02/2021 executed in favour of defendants by his grandmother named above and a decree for perpetual injunction restraining the defendants from disturbing his possession over the suit property. In this suit defendants had filed application for rejection of plaint which was allowed by the learned trial Court vide order dated 29/07/2024, whereby

the plaint came to be rejected. The plaintiff filed appeal challenging the order of rejection of plaint and the appeal is also dismissed by the learned first Appellate Court.

2. The grandmother of the plaintiff has filed the proceedings under the provisions of the Senior Citizens Act against the plaintiff, his father Ramkrushna and four other sons who are paternal uncles of the plaintiff. The said application was allowed by the Senior Citizen Tribunal vide order dated 29/12/2020. The Gift dated 04/06/2019 was declared to be illegal and the appeal preferred by the plaintiff, his father and one paternal uncle is dismissed by the Appellate Authority vide order dated 05/01/2022. The suit is filed in the aforesaid circumstances seeking reliefs mentioned above.

3. The learned Advocate for the appellant contends that the orders passed by the learned Tribunal as well as Appellate Authority are without jurisdiction. He contends that since his grandmother had four sons, the plaintiff was not liable to provide for maintenance of his grandmother and therefore, the grandmother could not have invoked Section 5 of the Senior Citizens Act against him. He further states that there is no condition in the Gift that the same was executed subject to condition that the donee i.e. plaintiff would provide for maintenance of the doner i.e. the grandmother. He, therefore, contends that Section 23 of the Senior Citizens Act will also not be applicable.

4. In view of the above, the contention of the learned Advocate for the appellant is that both the orders are without jurisdiction and therefore, the bar under Section 27 of the Senior Citizens Act will not be applicable and Civil Court

had the jurisdiction to entertain the suit. He further contends that a plaint cannot be rejected in part and that apart from challenge to the aforesaid orders and prayer for declaration of ownership, the plaintiff has also challenged Will allegedly executed by the grandmother in favour of the defendants with a further prayer for perpetual injunction against forcible dispossession.

5. As regards the prayer challenging the orders passed by the authorities under the Senior Citizens Act, it will be appropriate to refer to definition of the term 'children' as defined under Section 2 (a) of the Senior Citizens Act. The definition is an inclusive definition and includes son, daughter, grandson and granddaughter. Section 4 (1) (i) of the Senior Citizens Act provides that a senior citizen who is unable to maintain himself or herself is entitled to maintenance against one or more of his or her children not being a minor. Reading of Section 4 and Section 2 (a) of the Senior Citizens Act would indicate that the grandmother had a right to seek maintenance against the plaintiff. The first contention that the application was not maintainable in view of the fact that the grandmother had four sons is, therefore, liable to be rejected. As regards the second contention that the Gift does not recite that the same was executed in view of maintenance, the said contention is also liable to be rejected, inasmuch as it is now well settled that a Gift may by itself not contain a stipulation that the same was executed in view of maintenance and that other extensive evidence in that regard can also be brought on record. It will be profitable to refer to the judgment of this Court in the matter of *Nitin Rajendra Gupta Vs. Collector*, reported in **2024**

SCC OnLine Bom. 1031.

6. Having regard to the aforesaid, it cannot be said that the orders passed by the learned Authorities are without jurisdiction. In that view of the matter, in the considered opinion of this Court the bar under Section 27 of the Senior Citizens Act will be applicable and the learned Civil Court would not have jurisdiction to test the veracity of the said order.

7. As regards the challenge to the Will, it is admitted that father and other children of the grandmother are alive and therefore, the plaintiff does not get ownership right by virtue of inheritance over the suit property on the demise of the grandmother. In that view of the matter, the plaintiff cannot claim any right over the suit property independent of the Gift, which is already set aside. Therefore, the plaintiff does not have any cause of action to assail the Will, which is challenged in the suit.

8. As regards the prayer for perpetual injunction, the plaintiff states that he is in physical possession of the suit property. The plaintiff has prayed for relief of injunction that the possession already over the suit property should not be disturbed without following due process of law. The plaintiff has pleaded in para No.7 of the plaint as under :-

“7. It is further submitted that, the plaintiff is the owner and in possession of the subject matter of the suit. After the death of the grandmother by named Sumanbai Eknath Ghanot who died on dated 29/09/2023, the defendants have started taking disadvantages and illegal document of Will-deed and on the basis of that document they are trying to get certification of mutation of the concerned Talathi of

village Rajura Ghate, Tq. Murtizapur, Dist. Akola. The present plaintiff raised objection before the concerned officer of village concerned Talathi of village Rajura Ghate. But the defendants are pressuring the concerned certifying officer with his man, muscle and money power. The defendants are trying to get mutation certified on the basis of illegal documents of title and they are trying to create problem to the right, title and interest of the plaintiff over the subject matter of the suit. If they will get the possession of the field, then it will create multiplicity of the proceeding by the unwarranted, illegal and malafide conduct of the plaintiff. There is serious threat of dispossession to the plaintiff's property i.e. subject matter of the suit. The plaintiff does not want to get entangled with defendants to their behaving like an enemy of the plaintiff. The plaintiff does not want to play a role of Mahabharat. The plaintiff has not suitable option except to rush before this Hon'ble Court for the redressal of the grievance."

9. The statement in paragraph 7 of the plaint, even if is taken on its face value does not make out any cause of action, inasmuch as the pleadings with respect to alleged dispossession are absolutely vague. The plaint does not refer to any purported act on the part of the defendants to disturb alleged possession of plaintiff over the suit property. Likewise the plaint does not make out case of bona fide apprehension of threat to alleged possession. Such vague pleas, in the considered opinion of this Court, are not sufficient to make out a cause of action. It is apparent that prayer for injunction is incorporated only in order to create a ground for maintaining the suit in view of legal principle that plaint cannot be rejected in part. The plaintiff has resorted to clever drafting to overcome Order VII Rule 11 of the Code of Civil Procedure. It

is duty of Court to guard against such tactics.

10. In view of the aforesaid, no substantial question of law arises for consideration in the second appeal. The second appeal is dismissed. No order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar