



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

SECOND APPEAL NO. 292/2024

1. Smt. Meerabai wd/o. Rangrao Raut,
Aged about 65 yrs., Occ. Agriculturist,
R/o. Pendhri, Post-Dahegaon/Parseoni,
Tah. Parseoni, Dist. Nagpur.
2. Sau. Sunita w/o. Bhimraoji Sahare,
Aged about 40 yrs., Occ. Household,
R/o. Nevurwada, Post, Navegaon Khairi,
Tah. Parseoni, Dist. Nagpur.
3. Sau. Savita w/o. Ashok Diwate,
Aged about 35 yrs., Occ. Household,
R/o. Bhulewadi, Post Navegaon Khairi,
Tah. Parseoni, Dist. Nagpur.
4. Sau. Seema w/o. Murlidhar Diwate,
Aged about 33 yrs., Occ. Household,
R/o. Salaimeta, Post Seoni (Bhondki)
Tah. Ramtek, Dist. Nagpur.
5. Sau. Nirmala w/o. Sanjay Donarkar,
aged abut 30 yrs., Occ. Household,
R/o. Bhandarbodi, Tah. Ramtek,
Dist. Nagpur.
6. Sau. Vidya W/o. Rahul Kamble,
Aged about 27 yrs., Occ. Household,
R/o. Athawadi Bazar, Yavatmal.

.... APPELLANT
(Org. Plaintiffs)
(On R.A.)

VERSUS

Rajaram Krushnaji Raut,
aged abut 53 yrs., Occ. Agriculturist,
R/o. Pendhri (Nimba), Tah. Parseoni,
Dist. Nagpur.

....RESPONDENT
(Org. Defendant)
(On. R.A.)

Mr. Nitin Lambat, Advocate for appellants.
Mr. R.T. Anthony, Advocate for respondent.

CORAM : **ROHIT W. JOSHI, J.**
DATED : **09/05/2025.**

ORAL JUDGMENT :

Heard.

2. The suit property was initially owned by one Rangarao Raut who expired on 04.11.1987. He was survived by his widow and five daughters. The widow of Rangarao namely Meerabai has sold the suit property to the defendant vide registered sale-deed dated 20.04.1989. Admittedly, permission as contemplated under Section 8 of the Hindu Minority and Guardianship Act, 1956 ("Act of 1956") is not sought

prior to execution of sale-deed dated 20.04.1989. In this backdrop, Meerabai widow and her five daughters filed Regular Civil Suit No. 12/2011 challenging the sale-deed dated 20.04.1989 executed by Meerabai in favour of dependant Rajaram. The sale-deed is executed in favouf of defendant by Meerabai for herself and for plaintiff Nos. 2 to 6, her daughters, who were minor at the relevant time. Apart from plaintiffs, mother-in-law of plaintiff No.1 is also one of the co-owner.

3. As stated above, the sale-deed dated 20.04.1989 came to be challenged in the aforesaid civil suit on several grounds including on the ground that the sale-deed was bad in law with respect to share of minor daughters inasmuch as permission under Section 8 of the Act of 1956 was not obtained prior to the execution of the sale-deed. Learned Trial Court has decided the suit vide judgment and decree dated 07.02.2019. Learned Trial Court has held that the sale-deed was not false or forged document as alleged by the plaintiffs. However, learned Trial Court has held the sale-deed is bad in law since permission under Section 8 of the Act of 1956 was not obtained prior to execution of the sale-deed.

4. As regard the point of limitation, learned Trial court has relied upon evidence of Meerabai who was examined as PW-1 on behalf of the plaintiffs, wherein she has stated that she came to know about the sale-deed for the first time in the month of June 2010. This statement is accepted by learned Trial Court and it is held that the suit is filed within limitation. It will be pertinent to state that the other plaintiffs i.e. the daughters who were minor as on the date of execution of sale-deed, have not entered the witness box. On such findings, learned Trial Court has partly decreed the suit holding that the sale-deed dated 20.04.1989 was bad in law and has accordingly passed a decree for cancellation of sale-deed along with decree for possession with respect to the suit property in favour of the plaintiffs. Aggrieved by said judgment and decree passed by learned Trial Court, the defendant/purchaser preferred an appeal being Regular Civil Appeal No. 134/2019. Learned First Appellate Court has allowed said appeal vide judgment dated 06.08.2022.

5. Learned First Appellate Court has recorded a finding that the plaintiffs had failed to prove the sale-deed dated 20.04.1989 was false or forged document. As regards the point of limitation, learned

First Appellate Court has held that the daughters i.e. plaintiff Nos.2 to 6 who were minor on the date of execution of sale-deed had not entered the witness box. It is held that the youngest daughter i.e. plaintiff No.6 had attained majority in the year 2003 and the limitation period of three years for filing suit to challenge the sale-deed had expired in the year 2006 itself. In view of this, it is held that the suit filed in the year 2011 was barred by limitation. It is held that a sale-deed executed in breach of mandate of Section 8 of the Act of 1956 is not void but only voidable at the instance of the minor.

6. In view of Article 60 of the Limitation Act suit for cancellation of sale-deed is required to be filed within the period of three years from the date on which the minor attains majority. In a given case, if the minor is not aware about the execution of the sale-deed, the period of three years may commence from the period on which the minor gets knowledge. However, in the present case, minor daughters have not entered the witness box. Learned Trial Court has held that the suit is filed within limitation placing reliance upon deposition of plaintiff No.1 mother who has admittedly executed the

sale-deed for herself and also for her minor daughters that she came to know about the sale-deed for the first time in the Month of June 2010.

7. Learned Trial Court has clearly erred in accepting the said statement. Once it is held that the sale-deed dated 20.04.1989 is not a false or forged document, it is obvious that the plaintiff No.1 who has executed the said sale-deed as vendor was aware about the execution of the sale-deed from the date of execution of said document itself. In the facts of present case, it was necessary for any one of plaintiff Nos.2 to 6 to enter the witness box to depose about the date on which they got knowledge about the impugned sale-deed. The failure on part of daughters to enter the witness box is fatal to their case on the point of limitation. The finding recorded by learned Trial Court on the aspect of limitation is clearly perverse and unsustainable. On the other hand, learned First Appellate Court has recorded proper findings on the point of limitation.

8. It is also well settled that sale-deed executed in breach of Section 8 of the Act of 1956 is not void, but voidable at the instance of minor and that the minor must file a suit to challenge the sale

transaction within a period of three years from the date of attaining majority in view of Article 60 of the Limitation Act.

9. Having perused the judgment delivered by learned First Appellate Court, I do not find any error or perversity in the findings of facts recorded by learned First Appellate Court. In that view of the matter, no substantial question of law arises for consideration in the present second appeal. The second appeal is therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J)

Gohane