



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

SECOND APPEAL NO.386 OF 2025

APPELLANT

(On RA)
(Original Defendant No.2)

:- Rashidkhan Nasirkhan,
Aged about 57 years, Occ. Agriculture,
R/o Mahuli Jahangir, Tq. & Dist. Amravati.

..VERSUS..

RESPONDENTS :-

(Original Plaintiff)

- 1) Kamanabai Manikrao Khadase,
Aged about 75 years, Occ. Household,
R/o Pimpalkhuta (Lahan), Tq. Morshi,
Dist. Amravati. Through her Power of
Attorney Holder: Bhimrao Khushalrao
Wankhade, Aged 68 years, Occ. Labour,
R/o Mahuli Jahangir, Tq. & Dist. Amravati.
- (Original Defendant No.1's LR)
(On RA) 2) Suresh Kisan Mohod,
(Legal Heir of Deceased Defendant No.1
Kisan), Aged about 58 years, Occ.
Agriculture, R/o Mahuli Jahangir, Tq. &
Dist. Amravati.

Mr. M.G. Sarda, Advocate for Appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 23/12/2025

ORAL JUDGMENT :

1. This appeal is preferred by the original defendant No.2 against concurrent decrees for possession passed against him. The parties will be referred as "plaintiff" and "defendants". The

defendant No.2 has purchased the suit property from the defendant No.1 under a registered sale deed dated 13.04.2005. It is not in dispute that the suit property was initially owned by one Baliram. The defendant No.1 claims to be the son of Baliram. He has sold the suit property to the defendant No.2 under the aforesaid sale deed. The plaintiff filed the suit stating that she is the daughter and sole legal heir of deceased Baliram and that defendant No.1 was in no way related to the deceased Baliram and consequently, had no right, title or authority to execute the sale deed in question in favour of defendant No.2. Initially, the plaintiff had filed a suit for possession, which was registered as Regular Civil Suit No. 360 of 2005. The suit was filed on 25.10.2005. The said suit was withdrawn by obtaining permission to file a fresh suit on the same cause of action. Permission to withdraw the suit and file a fresh suit on same cause of action was granted by the learned trial Court vide order dated 12.02.2008. Subsequently, fresh suit for possession is filed on 20.01.2010.

2. Mr. Sarda, learned Advocate for the appellant/defendant No.2 contends that the limitation for filing the suit will be governed under Article 59 of the Limitation Act, which provides limitation of three years. He contends that although a fresh suit on the same

cause of action could be filed in view of permission granted by the learned trial Court, the suit ought to have been filed within the period of limitation of three years and that the time spent in prosecuting earlier suit cannot be excluded for the purpose of computation of limitation for fresh suit.

3. The learned trial Court has recorded a categorical finding that the defendant No.1, the vendor of the defendant No.2, was in no way related to deceased Baliram, who was admittedly the owner of the suit property. It is duly proved that the plaintiff is the daughter of Baliram. This finding of fact is again confirmed by the learned First Appellate Court.

4. The only point which is canvassed by the learned Advocate for the defendant No.2 /appellant is that the suit was barred by limitation. The learned Advocate has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Abdul Rahim and others ..vs.. Sk. Abdul Zabbar and others*¹. He has led emphases on paragraph-28 of the judgment to contend that a suit for cancellation of deed of conveyance, whether it is void or voidable, is governed by Article 59 of the Limitation Act and therefore such a suit must be filed within a period of three years from the date of knowledge of the transaction.

1 (2009) 6 SCC 160

5. In the said case, one Haji Shaikh Abdullah, was owner of the suit property, who had executed a registered gift deed with respect to the same in favour of his younger son Abdul Razak. The elder son of the donor filed a suit challenging the said gift deed in the year 1980. Thus, a registered gift deed of the year 1973 was challenged in the year 1980. The challenge to the gift was on the ground that the gift was not coupled with delivery of possession and was therefore illegal as per muslim law. One of the issues which fell for consideration before the Hon'ble Supreme Court which as to whether the suit was within limitation. In this context, the Hon'ble Supreme Court has held in Paragraph-28 of the judgment that a suit for cancellation of a transaction, on the ground that it is void or voidable, is governed by Article 59 of the Limitation Act and must be filed within a period of three years from the date of knowledge of such transaction.

6. With respect, the ratio of the said case will not be applicable to the facts of the present case, where the defendant No.2 has purchased the suit property from defendant No.1 and it is established that defendant No.1 was not the owner of the suit property. It is not in dispute that the suit property belonged to Baliram, late father of the plaintiff. The claim of defendant No.1

that he is the son of Baliram is not established. Therefore, defendant No.1 is a complete stranger. The defendant No.1 had no right, title or authority of any nature whatsoever to transfer the suit property. The sale deed executed by defendant No.1 in favour of defendant No.2 is without any right, title or authority. The sale deed is therefore void *ab initio* and nonest. It is not necessary to challenge such a sale which is without any authority. Since the sale deed is void *ab initio* limitation will not be governed by Article 59 but by Article 65. In such a suit where the true owner of the property seeks possession on the basis of ownership a transaction by a person who had no authority to deal with the property, can simply be ignored. Even if a prayer is made for declaration that the sale is illegal or for cancellation of sale, the limitation will not be governed by Article 58 or 59 but by Article 65 of the Limitation Act, 1963. Reliance in support of this can be placed on judgment of the Hon'ble Supreme Court in the case of *Madhegowda ..vs.. Ankejowda*², wherein the Hon'ble Supreme Court has held that a sale which is *per se* invalid is not required to be set aside by filing a suit or judicial proceedings. In the said case, property of a minor was sold by his *de facto* guardian. The minor had challenged the sale five years after attaining majority. The issue was where the suit was filed within the

2 (2002) 1 SCC 178

limitation. The aforesaid observations that sale which is *per se* illegal is not required to be challenged is made in this backdrop. The present case stands on a higher pedestal whether the vendor (defendant No.1) had no title or even semblance or right over the suit property which he sold to the defendant No.2.

7. It was not necessary for the plaintiff to challenge the sale deed also on the ground that she is not party to the said document. Reliance in this regard can be placed on judgment of the Hon'ble Supreme Court in the matter of *Hussain Ahmed Choudhury and others ..vs.. Habibur Rahman (dead) through LRs and others*³ No substantial question of law arises for consideration. Second Appeal is therefore **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate