



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

SECOND APPEAL NO. 15 OF 2024

Urmiladevi Satyanarayan Raju Chilguri and others

Vs.

Pericharla Ramavati Suryanarayan Raju

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

Court's or Judge's Order

Shri Madhur Deo, Advocate for appellants.
Shri Shankar Borkute, Advocate for respondent.

CORAM :- M. W. CHANDWANI, J.

DATED :- 23.06.2025

Heard.

2. The plaintiffs who were unsuccessful before the Trial Court as well as the Appellate Court have filed this Second Appeal challenging the registered gift-deed dated 05.03.2005 executed by Gopamma, the mother of the appellants as well as the respondent in favour of the respondent. The appellants also claimed to be the owners of the suit property by virtue of the will-deed dated 19.06.2008 executed by Gopamma. The contention of the appellants is that, the gift-deed was executed fraudulently by the respondent in her favour by taking undue advantage of her fiduciary relationship with Gopamma who died on 05.08.2008 after executing the registered will-deed. The Trial Court and the First Appellate Court had held that the possession of the suit property is with the respondent.

3. Evidently, the gift-deed was executed on 05.03.2005 prior to the will-deed dated 19.06.2008. Gopamma has mentioned in the will-deed that she is cancelling the gift-deed just because the respondent had left her within 10 days after execution of the gift-deed. This fact mentioned in the will-deed executed by Gopamma goes against the appellants themselves and dismantles their contention that the respondent fraudulently got the gift-deed executed by taking undue advantage of the fiduciary relationship. Even after passage of 3 years, Gopamma did not mention in her will-deed that the gift-deed was never executed by her. Therefore, no interference is required in the findings of the Trial Court that the registered gift-deed dated 05.03.2005 which has been executed in favour of the respondent is a valid gift-deed. Since, on the date of execution of the will-deed or on the date of death of Gopama, she was not the owner of the suit property, therefore, the Trial Court as well as the Appellate Court have rightly non-suited the appellants.

4. Reliance has been placed by the learned counsel for the appellants upon the decision in the case of *Keshav and others Vs. Gian Chand and another [(2021) 18 SCC 121]* wherein, it has been held that if a claim is made that a document was executed by using undue influence or by taking advantage of the fiduciary relationship between the parties, it is for the person in whose favour the document has been executed to prove

otherwise. There is no doubt to this legal position but the Courts below have found that the claim of the appellants that the document was executed by taking undue advantage of the fiduciary relationship has not been proved. Therefore, the decision cited by the learned counsel for the appellants does not apply to the facts of the present case. More so, the contents of the plaint as well as the findings of the Trial Court as well as the Appellate Court go to show that the suit is hopelessly barred by limitation. Therefore, no substantial question of law arises in this appeal.

5. Hence, the appeal is dismissed.

(M. W. CHANDWANI, J.)