



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

SECOND APPEAL NO.353 OF 2025

Seema Satish Shrawagi

Vs.

Rajkumar Balmukund Agrawal and Others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Onkar Ghare, Advocate for the Appellant.

CORAM: ROHIT W. JOSHI, J.

DATED : 01st DECEMBER, 2025

1. The present appellant had filed a suit being Special Civil Suit No.120/2017 (Old Regular Civil Suit No.569/2003) *inter-alia* seeking the following reliefs :-

“A) *be altered by way of declaration that the deft. no.1 and 2 are not the owners of the suit property and deft. no.3 have no right to change the nature of the gift deed.*

A(a) *It be declared that the deft.no.1 and 2 are not the owners of the suit property as described in Schedule A and B and the deft. no.3 have no right to sale the property or to change its nature.*

B) *For permanent injunction restraining deft No. 1 Rajkumar Balmukund Agrawal and others deft No. 2 and his family members, agents, servants and any other person claiming through him, from further transferring the suit property to any other person and dealing with the property in any mode manner and way and from making any type of construction over the suit property in any manner.*

C) *The deft. No. 4 Collector be directed to make detailed enquiry into the transaction and the person who have committed illegalities be punished by filing the criminal prosecution against them.*

D) *Costs of the suit be awarded to the plff.*

E) *Any other relief which this Hon'ble Court deems fit and proper be granted infavour of the plff.”*

2. The defendant Nos.1 and 2 filed an application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 which came to be allowed vide order dated 03.07.2019. The appellant had preferred First Appeal challenging the said order of rejection of plaint being Regular Civil Appeal No.98/2019, which appeal came to be dismissed vide judgment and decree dated 15.06.2024. The aforesaid order of rejection of plaint and decree dismissing the appeal arising therefrom are subject matter of challenge in the present second appeal.

3. Although the copy of plaint is not filed on record, certified copy thereof is produced for perusal. The appellant and one Raju Daulatrao Rokade had filed aforesaid civil suit claiming to be social workers, having concern with the development of Akola City. The plaintiffs contended that the suit property which is a piece of land situated in front of Collector Office was initially owned between George Wingate who had transferred the same to the defendant No.3 'Alliance Machinery' in the year 1885, on a condition that the suit property will be utilized at all times for religious purposes.

4. It is contended that contrary to the said covenant in the gift deed, the defendant No.3 sold the suit property to the defendant No.1 in the year 1981 and defendant No.2 in the year 1986. The description of properties sold to the defendant Nos.1 and 2 is given in Schedule A and B respectively, appended to the plaint.

5. Perusal of para No.3 of the plaint will indicate that it is the case of the plaintiffs that although the suit property can be transferred or given to any other person, the transfer should also be subject to condition that the suit property will be utilized only for religious purpose. Similar averment is made in para No.5 of the plaint as well.

6. It is thus apparent that right of defendant No.3 to alienate the property is, in terms, accepted by the plaintiffs. However, in this backdrop when the prayers in the plaint are perused, it appears that the plaintiffs have sought declaration with respect to the ownership of defendant Nos.1 and 2 over the portion of suit property purchased by them respectively.

7. The plaintiffs have not sought a declaration or any other relief directing the defendant Nos.1 and 2 to utilize the suit property for religious purpose only.

8. In view of the aforesaid, in the considered opinion of this Court, the relief claimed in the plaint is clearly contrary to the plaint averments. The plaintiffs have failed to make out any cause of action to seek the reliefs sought in the plaint, taking the plaint averments on their face value. Although for different reasons, the learned Trial Court has recorded that the plaintiffs failed to make out a case, even on the basis of the plaint averments, that the defendant No.3 did not have any right to sell the suit property.

9. The Learned First Appellate Court has decided the question of limitation against the plaintiffs holding that the suit was apparently barred by limitation since

the Sale Deeds in question were executed in the year 1981 and 1986 respectively and that the suit was instituted in the year 2003.

10. Normally, limitation is mixed question of law and facts. However, when the plaint averments themselves disclose that the suit is filed beyond the period of limitation, the plaint can be rejected by exercising the powers under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

11. In the present case there is an averment in para 13 of the plaint that the cause-of-action arose on 12.12.2001, when the plaintiffs came to know about relevant facts after obtaining the copy of the Sale Deeds in question. It is not in dispute that the Sale Deeds in question are executed and registered in the year 1981 and 1986 respectively. The plaint averments do not indicate any reason for the plaintiffs to make an application for grant of certified copies of the Sale Deeds in the year 2001. It appears that the plaintiffs have skillfully drafted the plaint in order to show that the suit is filed within a period of limitation. No reason is mentioned for making an application for grant of certified copy of the Sale Deeds in the year 2001 i.e. after the period of around 20 and 14 years respectively from the date of execution and registration of the Sale Deeds.

13. In the considered opinion of this Court that the Learned First Appellate Court has rightly held on the face of plaint averments that the suit is filed beyond the prescribed period of limitation.

14. Having regard to the totality of circumstances, particularly to the fact that the plaint averments taken on their face value do not make out a right to seek reliefs sought in the plaint, this Court sees no reason to show indulgence in the matter.

15. No substantial question of law arises for consideration therefore, the second appeal is **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

Privel