



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

94 CRA NO. 129 OF 2025

ANJANABAI PRABHAKAR PAWAR
VERSUS
BABITABAI SURESH PAWAR AND OTHERS

...
Advocate for the Petitioner : Mr. Joshi Milind Madhu

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CORAM : SHAILESH P. BRAHME, J.

DATE : 10.02.2026

PER COURT :

Learned counsel for the applicant. None for the respondent no 1.

2. While issuing notice on 11.07.2025 it was indicated that the matter shall be decided finally at the admission stage. Respondent no. 1 caused appearance through a lawyer. He was absent on 14.01.2026, hence, matter was adjourned. Today again none appears for respondent no. 1.

3. Revision Application is directed against the order dated 24.04.2025 passed below Exh. 34 in Regular Civil Suit No. 475/2021, rejecting the application preferred under Order VII Rule 11 of the Code of Civil Procedure. The applicant is original defendant no. 5 and respondent no. 1 is the plaintiff in Regular Civil Suit No. 475/2021 filed for declaration, possession and perpetual injunction.

4. Learned counsel appearing for the applicant submits that presently he is pressing the ground of limitation for rejection of the plaint. He has adverted my attention to the pleadings in paragraph no. 4, 5 and 7 of the plaint to buttress that plaintiff was aware of the execution of registered gift-deed of 10.12.2002 as well as correction deed. But still neither her deceased husband nor herself preferred to challenge the registered

instrument within the period of limitation. It is submitted that the cause of action shown in the plaint is articulated one and it is out come of clever drafting. It is further submitted that relief of possession and injunction are consequential in nature and entire plaint is liable to be rejected. It is further submitted that trial Court committed error of jurisdiction in rejecting the application on the ground that it was a mixed question of law and facts.

5. The relationship between the parties is not disputed. Plaintiff's husband Suresh is real brother of Anjanabai, who was ex-serviceman and after retirement he was allotted the plot in question. During his lifetime he executed a registered gift-deed on 10.12.2002 in favour of the applicant who is his real sister. The correction deed which was also registered, was executed on 17.12.2002. Plaintiff's husband died on 05.05.2018. During his lifetime, no proceedings are taken up challenging the registered instruments. Present suit is filed on 12.10.2021 challenging the registered gift-deed and the correction deed.

6. Plain reading of paragraph nos. 4, 5 and 7 would indicate that the plot in question was gifted by deceased Suresh to the applicant and there was agreement in between Suresh on one hand and applicant and her husband on other hand hand that applicant's husband was to provide him alternate accommodation. It can be inferred that the transaction was within knowledge of the plaintiff. It is specifically averred in paragraph no. 5 that in 2004 attempts were made by the plaintiff's husband for cancellation of the gift-deed. The understanding is reiterated in the paragraph. In paragraph no. 7 it is further pleaded that previously on many occasions the plaintiff insisted the applicant and her husband to cancel the gift-deed, but it was not acceded to. It can be safely inferred from the reading of the plaint that plaintiff was aware about the transaction between her deceased husband and the applicant.

7. There is absolutely no pleading on record in the plaint that the

transaction in question was entered into by deceased husband and the applicant behind back and plaintiff was not apprised of it or terms of understanding. During life time of deceased Suresh, plaintiff or her husband could have approached Civil Court challenging the transaction.

8. Interestingly, the cause of action is stated to be that of 22.08.2021 when threats were given by the applicants. It is a case of clever drafting and illusory cause of action. The suit, challenging the instrument should have been filed within three years as per Article 58 of the Limitation Act. In order to overcome the impediment of limitation cleverly the cause of action is stated to be in 2021. The proceedings are apparently vexatious and need to be nipped in the bud. Present case is squarely covered by judgment of **Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra); 2020 AIR (SC) 3310.**

9. Reliance is placed on judgment of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by legal representatives; (2020) 16 Supreme Court Cases 601.** In that case also the plaint for the challenging the registered gift-deed is sought to be rejected. It was executed on 06.03.1981 and suit was filed after period of limitation. It was observed by the Supreme Court that plaintiff was aware of the execution of the gift-deed executed by plaintiff and his brother. In that case also the plaintiff never disputed the gift-deed till 2003. In the above context the Supreme Court reversed the findings recorded by the Trial Court and High Court and rejected the plaint. In paragraph no. 8 it was observed that in that matter no specific prayer challenging the gift-deed was sought. Whereas, in the present case the predominant and express prayer is challenge to gift-deed and correction deed. The ratio laid down in the judgment is squarely applicable, which is as follows:

“8. At this stage, it is required to be noted that, as such, the Plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a

prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court.”

10. Civil Revision Application is allowed. Impugned order passed below Exh. 34 is hereby quashed and set aside. The plaint in Regular Civil Suit No. 475/2021 shall stand rejected.

(SHAILESH P. BRAHME, J.)

mkd/-