IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 45 OF 2026

Sheela Mohan Mathrani
Since decd. Through LR
Kavita Mohan Mathrani ..Appellant
Versus
Chandan Mohan Mathrani & Ors. ...Respondents

WITH
INTERIM APPLICATION NO. 180 OF 2026
IN
SECOND APPEAL NO. 45 OF 2026

Mr. Jaydeep Deo a/w. Mr. Onkar Gawade, for appellant
Mr. Yuvraj Narvankar, for the Respondent No. 1.

CORAM	:	N. J. JAMADAR, J.
RESERVED ON	:	21st JANUARY 2026
PRONOUNCED ON	:	06th MARCH 2026

ORDER:

1. This Second Appeal is directed against a judgment and decree dated 21st November, 2025 passed by the learned District Judge, Pune in Regular Civil Appeal No. 254/2024, whereby the appeal preferred by the appellant-plaintiff against a decree dated 03rd December, 2024, passed by the learned Civil Judge, Pune, in Regular Civil Suit No. 223/2018, thereby dismissing the suit, came to be dismissed by affirming the decree passed by the Trial Court.

2. Smt. Sheela - the deceased-plaintiff, was the wife of Mr. Mohanlal (Plaintiff 1-A) and the mother of Ms. Kavita (Plaintiff 1-B) and Mr. Chandan (D-1). The deceased-plaintiff was the owner of Plot No. 547 with a bungalow standing thereon situated at Aundh, Dist. Pune (the suit property), in Sindh Co-operative Housing Society Ltd. (D-2). The deceased-plaintiff and her husband (Plaintiff 1-A) were in occupation of the suit property.

3. On 18th January, 2018, the Defendant No. 1 took the deceased-plaintiff, then 80 years of age and Mr. Mohanlal (Plaintiff 1-A) to the office of the Sub-Registrar on the pretext that, some official formalities were required to be completed. The Defendant No. 1 allegedly obtained the signature of deceased-plaintiff, and his father (plaintiff 1-A) by practicing fraud, coercion and undue influence. It later transpired that, the said document was a power of attorney with authority to gift the suit property to the Defendant No. 1 himself.

4. On the strength of said power of attorney, the deceased-plaintiff alleged on the very next day i.e. 19th January, 2018, the Defendant No. 1 got a gift deed executed and registered in his favour as a donee of the suit property. Thus, the deceased-plaintiff instituted the suit for a declaration that, the power of attorney and the gift deed were null and void and for the consequential reliefs of injunction.

5. The original plaintiff passed away during the pendency of the said suit. The appellants came to be impleaded as her legal representatives. The Appellant No. 1-B adduced evidence.

6. After appraisal of the evidence and the material on record, the learned Civil Judge was persuaded to dismiss the suit holding, *inter alia*, that, the plaintiff failed to establish that, the Defendant No. 1 had obtained the power of attorney dated 18th January, 2018 and the gift deed dated 18th January, 2018, by practicing fraud, coercion and misrepresentation. The learned Judge found that, the deceased-plaintiff and the Plaintiff No. 1-A had executed the power of attorney after fully appreciating the nature of the said power of attorney and the consequences thereof.

7. Being aggrieved, the plaintiffs preferred an appeal before the District Court. By the impugned judgment and decree, the learned District Judge dismissed the appeal finding no fault with the reasoning of the Trial Court. The learned District Judge concurred with the learned Civil Judge that, the plaintiff failed to prove that, the Defendant No. 1 had got the power of attorney and the gift deed executed by practicing fraud, coercion and misrepresentation.

8. Being further aggrieved, the appellants are in Second Appeal.

9. Mr. Deo, the learned Counsel for the appellants, submitted that, the learned Civil Judge as well as the learned District Judge committed a manifest error in law in holding that, the gift deed was duly proved in evidence, although the Defendant No. 1 had not led any evidence. Mr. Deo would urge that, in view of the provisions contained in Section 68 of the Evidence Act, 1872, it was incumbent upon the Defendant No. 1 to examine at least one attesting witness. An endeavor was made by Mr. Deo to drive home the point that, the proviso to Section 68 which dispenses with the examination of an attesting witness in proof of the execution of a document, not being a will, if it is registered, was not attracted as the execution of both the power of attorney and the gift deed was specifically denied by the original plaintiff.

10. Mr. Deo would further submit that, the Courts below failed to appreciate the distinction between the mere signature on a document and its execution out of one's own volition. The mere proof of signature on a document is not proof of its due execution. To buttress this submission, Mr. Deo placed reliance on the judgment of the Supreme Court in the case of ***Veena Singh (Dead) through Legal Representative Vs. District Registrar/Additional Collector (F/R) and Another***[1], wherein in the context of the provisions of the Registration Act, 1908, the Supreme Court enunciated that, the "execution" of a document does not stand admitted merely because a person admits to having signed the document. Such an interpretation accounts for circumstances where an individual signs a blank paper and it is later converted into a different document, or when an individual is made to sign a document without fully understanding its contents. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a civil court or a writ court, since registration will have to be allowed once the signature has been admitted. If the interpretation conflating signing with execution is adopted, it would ensure that, the Sub-Registrars/Registrars will continuously end up registering documents whose validity will inevitably be then disputed in a civil suit or a writ petition. While the suit or writ proceedings

1 (2022) 7 SCC 1

continue, the document would remain on the public records as a registered instrument, which has the potential to cause more disruption. Hence, such an interpretation should not be adopted by the Supreme Court.

11. Mr. Deo also placed reliance on a judgment of the learned Single Judge of this Court in the case of ***Dattatray Narayan Aher Vs. Bhaskar Narayan Aher***[2], wherein, in the facts of the said case, it was enunciated that, the plaintiff had unequivocally stated that he was not admitting the gift deed and that he had not executed the gift deed and, thus, the proviso to Section 68 would not come into play and, therefore, the examination of an attesting witness to prove the gift deed was necessary.

12. Mr. Deo would thus urge that, the appeal gives rise to the substantial question of law as to whether, the Courts below committed an error in holding that, the gift deed was duly proved though its execution was specifically denied and yet the Defendant No. 1 did not examine any attesting witness?

13. In opposition to this, Mr. Narvankar, the learned Counsel for Respondent No. 1, submitted that, the case, now sought to be urged in the Second appeal, was not pleaded before the Courts

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2 2010 (6) Mh.L.J.

below. Before the Trial Court, it was the specific case of the plaintiff that, the power of attorney was obtained by practicing fraud, coercion and misrepresentation. The execution, as such, of the power of attorney was not put in contest. It was asserted that, the power of attorney and the gift deed were vitiated by the fraud, coercion and misrepresentation. The Trial Court has recorded a categorical finding that, the plaintiff failed to establish the case of fraud, coercion and misrepresentation. The said finding of fact has been affirmed by the Appellate court. Such concurrent findings of fact are not open for interference in the Second Appeal.

14. Mr. Narvankar would urge that, the substantial question of law sought to be pressed into service on behalf of the appellant does not emerge from the facts of the case. It is not the case that, the deceased-plaintiff had executed the gift deed personally. The denial of execution was confined to the power of attorney. Thus, the submission that, the execution of the instrument, which is required to be attested, was denied, is misconceived.

15. Mr. Narvankar would further submit that, in view of the admissions elicited in the cross-examination of Ms. Kavita, the case of the plaintiff was completely demolished and it was, therefore, not necessary for the Defendant No. 1 to adduce evidence. Emphasis was laid on the fact that, both deceased-plaintiff and Mr. Mohanlal (plaintiff 1-A) were well educated and were working till the year, 2018. Moreover, Ms. Kavita (plaintiff 1-B) conceded in the cross-examination that, number of properties belonging to the Plaintiff 1-A were transferred in her name by the very method, namely, execution of a power of attorney with a power to make a gift and subsequent execution of the gift deed in favour of Ms. Kavita (Plaintiff 1-B). It was submitted that, Ms. Kavita (plaintiff 1-B) was instrumental in instituting the suit and the said fact becomes evident from the conduct of the late plaintiff as she never filed an affirmed affidavit in lieu of examination-in-chief. As all these factors have been considered by the Courts below, the concurrent finings of fact do not warrant interference, urged Mr. Narvankar.

16. The aforesaid submissions now fall for consideration.

17. At the outset, it is necessary to keep in view the limits of interference in a Second appeal under Section 100 of the Code of Civil Procedure, 1908. It is impermissible for the High Court to re-appreciate the evidence while exercising jurisdiction under

Section 100 of the Code, 1908. This Court can venture to entertain a Second Appeal on the ground of erroneous finding of fact, based on appreciation of the evidence.

18. Aware of aforesaid limitations, Mr. Deo the learned Counsel for the appellants, would urge that, the substantial question of law arises on account of non-examination of an attesting witness in proof of the gift deed, as the execution of the gift deed, as such, was not admitted, though the instrument is registered. Resultantly, the proviso to Section 68 does not come into play. The learned District Judge as well as the learned Civil Judge committed a manifest error in law in not appreciating this aspect of the matter.

19. Section 68 of the Indian Evidence Act prescribes the mode of proof of execution of document required by law to be attested. It reads as under:-

> "68. Proof of execution of document required by law to be attested. - If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:
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> [Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of

> 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

20. On a plain reading of the aforesaid provision, it becomes explicitly clear that, if a document is required by law to be attested, it cannot be used as evidence until one attesting witness, at least has been called for the purpose of proving its execution, if an attesting witness is alive, subject to the process of the Court and also capable of giving evidence. The proviso to Section 68 of the Code, mollifies the rigour of the main part of Section 68 and provides that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, <u>unless its execution by the person, by whom it purports to have been executed is specifically denied</u>.

21. In effect, the proviso dispenses with the necessity of examination of an attesting witness in proof of the documents which are required to be attested, if they are registered, barring a will; which is required to be proved by examining an attesting witness, even if it is registered. This exemption from examination of an attesting witness in proof of a document required to be attested, if it is registered, would not, however, be available if the very execution of the document is specifically denied. The later part of the proviso thus implies that, if the execution of the document is specifically denied, it would be incumbent upon the person seeking to use the document, which is required to be attested, in evidence, to examine an attesting witness in proof of its execution, notwithstanding the registration of the said document.

22. Thus the question as to whether the examination of an attesting witness is necessary to prove the execution of a document, which in law is required to be attested, if it is registered, hinges upon the fact as to whether execution as such of the said document is admitted or specifically denied. If it is specifically denied, the examination of an attesting witness is a must.

23. When can the execution of the document be said to be, "specifically denied". It is trite mere admission of signature on a document cannot be equated with the execution of the document. Mr. Deo, the learned Counsel for the appellants was justified in canvassing a submission that, mere admission of signature does not amount to execution of the document. In the case of ***Veena Singh (supra)***, on which a strong reliance was placed by Mr. Deo, in the context of the provisions contained in the Registration Act, 1908, the Supreme Court *inter alia* considered the question whether appellant's admission of her signature and thumb impressions/fingerprints on the sale deeds also amounts to admission of its execution. In that context, the Supreme Court enunciated that, the "execution" of a document does not stand admitted merely because a person admits to having signed the document.

24. In the case of ***Dattatray Vs. Bhaskar (supra)***, a learned Single Judge of this Court, after appreciating the pleadings and evidence in the said case, observed that, when the plaintiff had unequivocally stated that, he was not admitting the gift deed, he had not executed the gift deed and that he had signed the document on the say of the defendant for obtaining a loan, it cannot be said that, the admission of the signature amounted to admission of execution of the document. The learned Single Judge referred to a judgment of the Karnataka High Court in the case of ***N. M. Ramachandraiah Vs. State of Karnataka***[3] wherein the following observations were made.

> "15. Therefore, the law is well settled. Execution of a document does not mean merely signing, but signing by way of assent to the terms of the contract embodied in the

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3 2007 SCC OnLine Kar 192

> document. Execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. It is as solemn act of the executant who mus town up the recitals in the instrument and there must be clear evidence that he put the signature after knowing the contents of document fully. To be executed, a document must be in existence; where there is no document in existence there can be execution. Mere proof or admission that a person's signature appears on a document cannot by itself amount to execution of a document. Registration does not dispense with the necessity of proof of execution when the same is denied. Thus, execution of document is not mere signing of it."

25. It is also well recognized that, there is difference between the challenge to the contents of the document and the character of the document. If the executant of the document asserts that, he had signed the document under an impression that, the document was different than the one which the apparent tenor of the document indicates that, it cannot be said that, the executant admits the execution of the document. It is always open to the executant to question the character of the document.

26. A profitable reference can also be made to the decision of the Supreme Court in the case of ***Rosammal Issetheenammal Fernandez (dead) by LRs & Ors. vs. Joosa Mariyan Fernandez &***

***Ors.*[4],** wherein the Supreme Court exposited as to when a document can be said to be specifically denied so as to exclude the operation of the proviso to Section 68 of the Evidence Act. The observations in Para Nos. 7 and 10 of the said judgment read as under:-

> "7. We find that High Court committed error by drawing such inference. In considering this question, whether there is any denial or not, it should not be casually considered as such finding has very important bearing on the admissibility of a document which has important bearing on the rights of both the parties. In fact the very finding of the High Court, "it is difficult to infer a specific denial of the execution of the document", shows uncertainty and vagueness in drawing such inference. In considering applicability of proviso to Section 68 of the finding should be clearly specific and not vaguely or negatively drawn. It must also take into consideration the pleadings of the parties which has not been done in this case. Pleading is the first stage where a party takes up its stand in respect of facts which they plead. In the present case, we find that the relevant part of the pleading is recorded in the judgment of the trial Court dated 17-8-1977 which is the judgment prior to the remand.
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> 10. Under the proviso to Section 68 the obligation to produce at least one attesting witness stands withdrawn if the execution of any such document, not being a will which is registered, is not specifically denied. Therefore, everything hinges on the recording of this fact of such denial. If there is no specific denial, the proviso comes into play but if there is denial, the proviso will not apply. In the

4 (2000) 7 SCC 189

> present case as we have held, there is clear denial of the execution of such document by the plaintiff, hence the High Court fell into error in applying the said proviso which on the facts of this case would not apply. In view of this the very execution of the gift deed, Exhibit B-1 is not proved. Admittedly in this case none of the two attesting witnesses has been produced. Once the gift deed cannot be tendered in evidence in view of the non-compliance of Section 68 of the Indian Evidence Act, we uphold that the plaintiff has successfully challenged its execution. The gift deed accordingly fails and the findings of the High Court contrary are set aside. In view of this no right under this document accrue to the concerned respondent over Schedule A property which is covered by this gift deed."

27. In the light of the aforesaid position in law reverting to the facts of the case at hand, first and foremost, it is imperative to note that, the deceased plaintiff had allegedly executed special power of attorney in favour of the Defendant No. 1. The case of the plaintiff was that, the plaintiff was taken to the office of the Sub-Registrar on the pretext that official formalities were required to be completed. The Defendant No. 1 allegedly obtained the signature of the deceased plaintiff and Plaintiff No. 1-A on the document by practicing fraud, coercion and undue influence. It later transpired that, the said document was a power of attorney with the authority to execute a gift deed. Admittedly, the gift deed was executed by the Defendant No. 1 in the capacity of power of attorney of deceased plaintiff in favour of himself. The deceased plaintiff has thus not personally executed the gift deed. In this context, the challenge sought to be mounted on behalf of the appellants that in view of the specific denial of the execution of the gift deed, it was incumbent upon the Defendant No. 1 to examine an attesting witness, is required to be appreciated.

28. Evidently, the execution, as such, of the gift deed by the deceased plaintiff, through her power of attorney/Defendant No. 1, is not in contest. Defendant No. 1 has executed the gift deed in the capacity of the power of attorney, in favour of himself. In such circumstances, the question of denial of execution of the gift deed does not arise. Therefore, the edifice of the submission, sought to be built by Mr. Deo, premised on the specific denial of the execution of the gift deed, falls through.

29. This propels me to the question of execution of the power of attorney by the deceased plaintiff. Whether the execution of power of attorney was tainted by vitiating elements of fraud, coercion, misrepresentation and undue influence. The Courts below have recorded categorical findings of facts that, the plaintiff failed to establish that the power of attorney was obtained by the Defendant No. 1 by practicing fraud or coercion and exercising undue influence. Whether, the Courts below have misconstrued the evidence in arriving at the aforesaid finding ?

30. The evidence on record indicates that, the deceased plaintiff was in a sound and disposing capacity. The execution as such of the power of attorney was not put in contest, though its character can, at best, be said to be contested. In this context, the situation in life of the deceased plaintiff, or for that matter her husband Plaintiff No. 1-A, who signed the said power of attorney as a witness thereto, as emerged from the evidence of Mrs. Kaveeta (PW1), assumes critical salience.

31. Mrs. Kaveeta (PW1) conceded that, the deceased plaintiff and Plaintiff No. 1-A were well educated. Plaintiff No. 1-A was the Chairman and Managing Director of a company till the year 2018. The deceased plaintiff was assisting Plaintiff No. 1-A in his business till the year 2017-2018. The deceased plaintiff was familiar with Hindi, English Sindhi and Marathi languages. The deceased plaintiff used to sign the documents in English. Conversely, no material could be placed on record to demonstrate that, the deceased plaintiff was either physically incapacitated or mentally infirm.

32. The aforesaid evidence indicates that, the deceased plaintiff was in a sound state of mind. An endeavor was made on behalf of the plaintiff to assert that, the deceased plaintiff had not carried the spectacles and was thus unaware of the contents of the power of attorney. However, Mrs. Kaveeta PW-1 conceded in the cross-examination that the photograph affixed on Page 12 of the power of attorney shows that, the deceased plaintiff was wearing spects.

33. A factor which is of material, nay decisive, significance is that, at the time of the execution the power of attorney, apart from the Defendant No. 1, the Plaintiff No. 1-A was present and did sign the power of attorney as a witness thereto. The deceased plaintiff never affirmed an affidavit in lieu of examination-in-chief putting oath behind assertions in the plaint during her lifetime. Thus, plaintiff No. 1-A, who witnessed the execution of the power of attorney was the best person to shed light on the circumstance in which the said power of attorney, came to be executed. Plaintiff No. 1-A chose not to enter the witness box. In the circumstances, the Courts below were justified in drawing an adverse inference against the plaintiffs for not examining the Plaintiff No. 1-A. In contrast, Mrs.

Kaveeta PW-1 conceded in the cross-examination that, as she was not present at the time of the execution of the power of attorney, she had no personal knowledge as to whether it was obtained by practicing fraud or coercion, and exercising undue influence.

34. In the light of the nature of the relationship between the parties, this Court has made an endeavor to satisfy its conscience. In regard to the submission on behalf of the Defendant No. 1 that, Mrs. Kaveeta, Plaintiff No. 1-B, has been a beneficiary of transfers of the property of the parents in a similar mode, Mrs. Kaveeta PW-1 conceded in the cross-examination that, a flat at Khar, Mumbai was purchased by Plaintiff No. 1-A in the joint names of the Plaintiff No. 1-A and 1-B and, subsequently, on the strength of power of attorney executed by the Plaintiff No. 1-A, she got a gift deed executed in favour of herself. Likewise, another flat at Pune was transferred absolutely in her name on the basis of a gift deed executed by her in favour of herself on the strength of a power of attorney executed by Plaintiff No. 1-A. Similarly, another flat at Andheri, Mumbai was transferred in her name by the Plaintiff No. 1 by giving her power of attorney to execute a gift deed in favour of herself. Thus, three properties were transferred in favour of Mrs. Kaveeta Plaintiff No. 1-B by following the same *modus operandi* in which the suit property came to be transferred by late plaintiff in favour of Defendant No. 1.

35. In the aforesaid view of the matter, this Court is unable to persuade itself to agree with the submissions of Mr. Deo that, a substantial question of law arises for consideration. This Court does not find any justifiable reason to interfere with the concurrent findings of facts recorded by the Courts below after appreciation of evidence. Resultantly, the Second Appeal deserves to be dismissed.

36. Hence, the following order:-

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i) The Second Appeal stands dismissed.

ii) In view of the dismissal of the Second Appeal, the Interim Application does not survive and accordingly stands disposed.

No costs.

[N. J. JAMADAR, J.]

At this stage, Mr. Deo, the learned Counsel for the appellants, seeks continuation of the ad-interim relief which was continued by the first Appellate Court when the First Appeal was dismissed.

It does not appear that, in the Second Appeal, any ad-interim relief has been granted.

Nonetheless, to facilitate the Appellant to challenge this order before the Supreme Court, Respondent No. 1 shall maintain status quo with regard to the suit property for a period of four weeks from today.

[N. J. JAMADAR, J.]