



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

SECOND APPEAL NO. 154 OF 2026

MAROTI S/O DAULAT WANI

Vrs.

MAHADEO S/O UKANDA GIRHE AND OTHERS

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

Court's or Judge's Order

Shri Tejas Deshpande a/w Shri Alpesh Deshmukh, Advocates for
appellant.
Shri R. N. Ghuge, Advocate for respondent Nos.1 to 3.

CORAM: Y. G. KHOBRAGADE, J.

DATE : 22/04/2026.

1. Heard Shri Tejas Deshpande, learned counsel
appearing for the appellant and Shri Rahul Ghuge,
learned counsel appearing for respondent Nos.1 to 3.

2. By the present appeal under Section 100 of
the Code of Civil Procedure, the appellant / original
plaintiff challenged the concurrent findings recorded by
both the Courts below.

3. Learned counsel appearing for the appellant
canvassed in vehemence that the appellant / original
plaintiff had filed R.C.S.No.112/2006 and prayed for
declaration that the sale deed executed on 03/06/1993 in

favour of the respondent No.2 is sham and bogus. He is the owner of the field bearing Block No.63 admeasuring 2 H. 31 R. The appellant / original plaintiff further prayed for decree of enquiry of mesne profit.

4. Learned counsel appearing for the appellant / original plaintiff canvassed that, Smt.Narmadabai (since deceased) was having one son Daulat and daughter Gangabai. In the year 1978, the plaintiff and his grandmother Smt. Narmadabai had jointly purchased the field Block No.63 admeasuring 3 H. 31 R. land from their vendor Mohd. Shammi Mohd. Yakub, out of which 1 H. land was sold by Smt. Narmadabai to meet the expenses of marriage and 2 H. 31 R. land was remained with the plaintiff and Smt. Narmadabai. Subsequently, said Smt.Narmadabai performed second marriage and begotten sons namely; defendant Nos.1 and 3 to 5. The present appellant / original plaintiff was minor and he was residing with the original defendant No.1. During the said period, his grand-mother Narmadabai expired. However, there were no partition between the plaintiff and defendants. By taking disadvantage of minority of the

plaintiff, who was addicted to liquor, got executed the sale deed from him to the extent of 1 H. 16 R. land in the name of defendant No.2.

5. The defendant Nos.1 to 3 filed their written statement at Exh.21 and resisted the claim.

6. On the basis of pleadings of both the parties, learned Trial Court framed the following issues at Exh.40.

	<u>Issues</u>	<u>Findings</u>
1	Does the plaintiff prove that defendant No.1 got executed sale deed of suit property from him without consideration in favour of his wife defendant No.2 ?	No
2	Does the plaintiff prove that sale deed dt.3.6.93 executed in favour of defendant No.2 is bogus and void?	No
3	Do defendants No.1 to 3 prove that being a legal heirs of Narmadabai, defendants No.1 & 3 to 5 are joint owners of Western 1 H.15 R. land of suit property ?	Defs. No.1,3 to 5 and the heirs of Narmadabai from her first husband are the joint owners.
4	Whether suit is within limitation?	is not in limitation in respect of relief of declaration that sale deed dt.3.6.93 is bogus.
5	Whether the plaintiff is entitled for relief claimed ?	No

6	What order and decree ?	As per final order
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7	<u>Additional Issue</u>	<u>Finding</u>
	Does the plaintiff prove that he was minor at the time of execution of sale deed dt.3.6.93 ?	No

7. On 15/01/2009, learned Trial Court passed the judgment and decree and dismissed said suit holding that, the plaintiff failed to prove that the sale deed of the suit property was executed without consideration, but said sale deed dated 03/06/1993 is valid and legal. Further, the defendant Nos.1 and 3 to 5 and legal heirs of Smt.Narmadabai from her first husband are joint owners of the suit property. So also, the appellant / original plaintiff failed to prove that he was minor on the date of execution of sale deed dated 03/06/1993.

8. The appellant / original plaintiff filed RCA No.2/2013 and assailed the judgment and decree dated 15/01/2009 passed in RCS No.112/2006. On 27/03/2024, the learned First Appellate Court passed the impugned judgment and order and dismissed the appeal.

The learned First Appellate Court held that though the appellant / original plaintiff contended that on the date of execution of the sale deed, he was 15 years old, hence, said sale deed dated 03/06/1993 is not binding upon him.

9. However, the learned First Appellate Court as well as learned Trial Court considered the evidence of PW-2 - Gram Sevak Ashok Tayde and concurrently held that, the PW-2 has proved the birth certificate Exh.38 issued by the Gram Panchayat. As per birth entry, the appellant's / plaintiff's date of birth is 14/03/1977, however, said entry has been taken on 25/04/2006 after lapse of 29 years from the date of birth and just prior to institution of suit bearing RCS No.112/2006.

10. On careful consideration of evidence of PW-2- Ashok Tayde, it appears that the PW-2 has not explained circumstances and documentary evidence on which basis, he recorded date of birth of the plaintiff.

11. After considering the date of birth of the appellant / original plaintiff i.e. 14/03/1977, but such entry was not effected soon after birth of the plaintiff. The

birth date of the plaintiff has been recorded on 25/04/2006 after lapse of 29 years without any justification and no any record was produced on which basis birth date of appellant / original plaintiff is 14/03/1977.

12. In Gangadhar s/o Gonduram Tadme Vrs. Trimbak s/o Govindrao Akingire and others, 2005(1) Mh.L.J. 94, this Court held that, *in order to give the presumptive value to the entries made in the register of birth, the condition specified under sub-section (1) of section 22 of the Births, Death and Marriages Registration Act has necessarily to be satisfied. It is a mandatory provision and non-compliance thereof will result in the registration to be treated as not the one done under the said Act. If the registration ceases to be the one under the said Act, any certificate issued in relation to such entries cannot have legal sanctity. Any certificate issued without compliance of the mandatory requirement under section 22(1) of the said Act, cannot be considered as a certificate issued under the provisions of the said Act and any such certificate, therefore, will not carry presumptive value*

under section 114 of the Evidence Act. Bare perusal of the certificate in respect of the third child produced by the petitioner while considering alleged disqualification to be a member of Gram Panchayat on birth of third child would disclose that the column in relation to the person who might have attended the wife of the petitioner at the time of delivery has been left without being filled-in. As regards the name and address of the person who had given the notice of birth, it only discloses the expression "Chaprasi" (peon). Neither the name of the person is disclosed nor his address or identity. Being so, the certificate cannot have presumptive value under section 114 of the Evidence Act, nor it can be said to be a certificate issued under the said Act bearing in mind the provisions of section 22(2) of the said Act. Therefore, no fault can be found with the authorities below in having not given presumptive value to the entries in the alleged certificate of birth of the third child of the petitioner.

13. The learned First Appellate Court as well as learned Trial Court concurrently recorded finding that, as per the sale deed Exh.70, the age of plaintiff was shown as

22 years and he is the party to the sale deed, who put his signature before the Sub-Registrar. Therefore, the appellant / original plaintiff cannot raise grievance after lapse of many years to show that at the time of execution of the sale deed, he was minor.

14. Both the Courts concurrently recorded the findings that at the time of execution of the sale deed, the plaintiff's age was shown as 22 years and he appeared before the Sub-Registrar and signed the sale deed.

15. Therefore, I do not find much force in the argument advanced on behalf of the appellant. Accordingly, I do not find any substantial question of law and as such, second appeal stands dismissed.

[JUDGE]