



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

SECOND APPEAL NO.420 OF 2023

Shri Anil Uttamprasad Joshi (dead) thru. LR's Anupama and ors.

Vs.

Smt. Sonal Sunil Joshi

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

Court's or Judge's Order

Mr. S. A. Kalbande, Advocate for applicants/appellants.

Mr. A. A. Sambaray, Advocate for non-applicant/respondent

CORAM : ROHIT W. JOSHI, J.

DATE : 04.03.2026.

CIVIL APPLICATION NO.997 OF 2025

1. The appellant in the present Second Appeal is the original plaintiff, who had filed a suit for possession against the respondent. The suit came to be dismissed.

2. The First Appeal preferred by the appellant is also dismissed, against which the original plaintiff has preferred the present Second Appeal. The respondent, who is the original defendant, has filed a cross-objection questioning the finding recorded by the learned First Appellate Court with respect to her ownership over the suit property.

3. Notice in the present Second Appeal was issued vide order dated 16.07.2024. The order records that notice before admission was issued to the respondent. It is clear from reading of the order dated 16.07.2024 that notice was issued without framing any substantial question of law.

4. Substantial question of law in the present appeal is framed vide order dated 25.08.2025. The cross-objection is filed on 03.09.2025. The present civil application is filed seeking dismissal of counter-claim on the ground that it is filed beyond prescribed period of limitation.

5. The contention of learned advocate for the appellant/applicant is that limitation for filing of cross-objection should be computed from the date of service of notice issued pursuant to order dated 16.07.2024. The learned advocate places reliance on judgments of this Court in *Vasant Builders (Developers, Builders and Contractors), Akot and anr. Vs. Mohan s/o Narayan Patwardhan*¹, and *Chhagan Trimbak Lokhande Vs. Dattatraya Krishna Pati*², in support of his contention.

6. The judgment in the case of *Vasant Builders* (supra) lays down that limitation for filing a cross-objection under Order 41 Rule 22 of the CPC commences from the date on which the respondent or his pleader is served with notice of the day fixed for hearing of the appeal or the day when the respondent enters appearance *suo motu* or on caveat, whichever is earlier and not on the day on which the respondent receives notice that paper book in the appeal is ready. It is held that notice contemplated under Order 41 Rule 22 of the

1 2021 (1) Mh.L.J. 585

2 (2019) 3 Mh.L.J 780

CPC need not be a notice for final hearing. The said judgment pertains to a First Appeal.

7. It is well settled that a Second Appeal has to be heard only on a substantial question of law. Substantial question of law in the present Second Appeal was framed on 25.08.2025 and the cross-objection is filed on 06.09.2025. The initial order issuing notice which was passed on 16.07.2024 is without framing any substantial question of law. Limitation for filing the cross-objection will, therefore, commence from 25.08.2025 in the present case, i.e., the date on which the substantial question of law was framed in the appeal. A second appeal can only be heard on a substantial question of law. In this regard it will be appropriate to refer to judgment of the Hon'ble Supreme Court in the case of ***R. Nagaraj (dead) thru Lrs and anr. Vs. Rajmani and ors***³, wherein it is held as under:-

“....Sub-section (4) provides that where the High Court is satisfied that any substantial question of law is involved in the case, it shall formulate that question. In other words, once the High Court is satisfied after hearing the appellant or his counsel, as the case may be, that the appeal involves a substantial question of law, it has to formulate that question and then direct issuance of notice to the respondent of the memo of appeal along

3 (2025) SCC OnLine SC 762

with the question of law framed by the High Court. Sub-section (5) provides that the appeal shall be heard only on the question formulated by the High Court under sub-section (4). In other words, the jurisdiction of the High Court to decide the second appeal is confined only to the question framed by the High Court under sub-section (4)”

Thus notice in Second Appeal is to be issued after framing substantial question of law.

8. The ratio of the judgment in the case of **Vasant Builders** (supra), when it has to be applied to a Second Appeal, will mean that limitation for filing cross-objection in filing Second Appeal shall commence from the date on which the notice is served on the respondent or his pleader on a substantial question of law or when substantial question of law is framed in the presence of the advocate for the respondent.

9. As regards the judgment in the case of **Chhagan (supra)**, this Court has held that period of limitation under Order 41 Rule 22 commences from the date of service of notice of final hearing of the appeal on merits. The hearing of appeal on merits in a second appeal can only be after framing of substantial question of law. The said judgment is also not of any help to the appellant.

10. It must also be stated that although certain findings are recorded against the present respondent by the learned First Appellate Court, the decree by the learned First Appellate Court is entirely in favour of respondent.

11. In that view of the matter, the substantial questions of law raised in the cross-objection can also be raised without filing a separate cross-objection. It is necessary to file a cross-objection only if the decree or part thereof is against the respondent in an appeal. In case where the respondent only intends to assail adverse findings, filing of cross-objection is optional.

12. In view of the aforesaid, Civil Application No.997 of 2025 is **rejected**.

CROSS OBJECTION NO. 87 OF 2025

13. Following substantial question of law were framed in the cross-objection vide order dated 26.09.2025:-

“I) “Whether the defendant is required to seek a declaration of ownership by filing a counter claim in a suit for declaration of ownership filed against him/her, where the defendant sets up title in himself or herself.”

II) Whether the learned First Appellate Court has erred in reversing the finding on issue no. 5 relating to the ownership of the defendant, without properly dealing with the

will at Exh. 123, stated to be executed in favour of the defendant by her mother-in-law Muktaben?”

14. Perusal of the judgment delivered by the learned Trial Court will demonstrate that the learned Trial Court has held that the defendant had become owner of the suit property by virtue of will dated 02.07.2007 executed in her favour by Muktaben. The learned Trial Court has also held that Will by Uttamprasad Joshi in favour of Muktaben Joshi was duly proved.

15. Perusal of judgment delivered by the learned First Appellate Court will demonstrate that the learned First Appellate Court has specifically recorded that Muktaben had become absolute owner of the suit property on the basis of Will executed in her favour by Uttamprasad. However, the learned First Appellate court has not recorded findings with respect to the Will dated 02.07.2007 executed by Muktaben in favour of the defendant. The defendant had produced the said Will and examined witnesses in order to prove the same. The learned First Appellate Court has observed that this evidence is without any pleading or counter-claim and on this ground, the finding on issue No.5, which pertains to Will dated 02.07.2007 is set aside.

16. Perusal of paragraph 12 of the written statement will demonstrate that there is a specific pleading with respect to the Will dated 02.07.2007 by Muktaben in

favour of the defendant. The observation by the learned First Appellate Court that there is no pleading with respect to the said will is, therefore, contrary to record.

17. As regards the observation by the learned First Appellate Court that there is no counter-claim by the defendant with respect to the said Will dated 02.07.2007 stated to be executed in her favour by deceased Muktaben, in the considered opinion of this Court, when a defendant sets up a defence setting up title over the suit property in himself/herself based on any document, it is not necessary to seek a declaration of title on the basis of said document.

18. The defendant can oppose the suit and the prayers made in the suit against him/her by proving the defence regarding title/ownership. The learned First Appellate Court has clearly erred in not dealing with the issue pertaining to Will dated 02.07.2007 stated to be executed by Muktaben in favour of the defendant on this ground.

19. The learned First Appellate Court is directed to record findings with respect to the Will dated 02.07.2007 in the light of pleadings and evidence on record and return the same to this Court.

20. The parties are directed to appear before the learned First Appellate Court on **23.03.2026**.

21. Record and proceedings be remitted to the learned First Appellate Court.

22. Parties are put to notice that separate notice for appearance will not be issued.

23. Learned First Appellate Court is requested to return the record alongwith its finding on the Will dated 27.07.2007 to this Court as early as possible and preferably before **30.04.2026**.

(ROHIT W. JOSHI, J.)

Ταῖμα...