



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

SECOND APPEAL NO.62 OF 2026

Pandhari S/o Ramchandra Pakhamode and others .Vs. Noorchand S/o Ramchandra
Pakhamode (Dead) through LR.s.

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

Court's or Judge's Order

Mr. P.L. Sagdeo, Advocate for appellants.

CORAM : ROHIT W. JOSHI, J.

DATE : 13/02/2026

1. The present appeal is preferred against the judgment and decree dated 22.04.2019 passed by the learned Civil Judge Junior Division, Lakhani, in Regular Civil Suit No.26 of 2012 and judgment and decree dated 25.11.2025 passed by the learned Principal District Judge, Bhandara, in Regular Civil Appeal No.175 of 2019. The appellants are original defendant Nos.1 to 3, 5 and 6. The respondent Nos.1 to 3 are legal heirs of original plaintiff and respondent No.4 is original defendant No.4. The parties will be referred as “plaintiff” and “defendants” hereinafter.

2. The plaintiff and defendant Nos.1 to 4 are real brothers and sons of deceased Ramchandra. During the lifetime of their father, Ramchandra, the properties of the family were partitioned on 10.11.1991 by virtue of an unregistered deed of partition. The suit properties had fallen to the share of their father, Ramchandra, in this partition. Thereafter, Ramchandra executed a registered gift deed dated 21.04.1999 in favour of the plaintiff. The said

document is at Exh.80. The defendant Nos.1 to 4 claimed that the father had cancelled the aforesaid gift deed by swearing an affidavit dated 03.02.2000. The defendant Nos.1 to 4 who claim ownership over the suit property in view of the affidavit dated 03.02.2000, have sold 0.30.4 H.R. of land bearing Gat No.408, situated at village Murmadi, in favour of the defendant Nos.5 and 6.

3. The plaintiff filed the suit seeking declaration of ownership over the suit properties by virtue of gift deed dated 21.04.1999 and sought a further declaration that the sale deed dated 13.04.2010, executed defendant Nos.1 to 4 in favour of defendant Nos.5 and 6, is null and void and not binding on him. Apart from this, a decree for perpetual injunction is sought restraining the defendants from obstructing his possession over the suit properties.

4. Both the learned Courts have concurrently held that the gift deed dated 21.04.1999 was duly proved and that the plaintiffs acquired absolute ownership over the suit properties on the basis of the said gift deed. As regards the alleged affidavit dated 03.02.2000, whereby the gift deed was stated to be revoked by the father, the Courts have concurrently held that the deposition of the witness to the said affidavit did not inspire confidence and held that the fact that the father had cancelled the gift by virtue of the said affidavit is not acceptable. Apart from this, the learned

Courts have held that a registered document of gift cannot be revoked in swearing an affidavit.

5. Mr. Parth Sagdeo, learned Advocate for the appellants/defendant Nos.1 to 3, 5 and 6 contends that the defendant Nos.5 and 6 are in possession of property purchased by them from defendant Nos.1 to 4 and therefore a suit for simpliciter declaration of ownership against them was not maintainable. He places reliance on decision of the Hon'ble Supreme Court in the case of *Vasantha (Dead) through LRs ..vs.. Rajalakshmi alias Rajam (Dead) through LRs*¹.

6. The plaintiff has filed the suit claiming ownership of the suit property along with a prayer for perpetual injunction against dispossession without following due process of law. The plaintiff claims to be in possession over the suit property. Since the plaintiff claims to be in possession of the suit property, he was obviously not required him to seek decree for possession. The plaintiff has claimed the consequential relief of injunction against dispossession without following due process of law. Therefore, it cannot be said that bar of Section 34 of the Specific Relief Act is attracted.

7. It must also be stated that the suit property is an open plot. The principle that possession follows title is

1 (2024) 5 SCC 282

squarely applicable to an open plot. Apart from this, the gift deed also records that the plaintiff was looking after the suit property since long on behalf of the donor and that he was independently placed in possession of the same. In view of the aforesaid, the contention raised by the learned Advocate for the appellants that there are in possession on the basis of sale deed is liable to be rejected.

8. No substantial question of law arises for consideration in the second appeal. Second Appeal is therefore **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)