

MHAU020031772012



Filed on : 26.06.2012

Registered on : 05.07.2012

Decided on : 30.04.2025

Duration:-12 Yrs.10 Mts.04 Days

IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION,
AT AURANGABAD.

(Presided over by Smt. A. D. Bose)

Spl.C.S.No. 200 /2012

Exh.No.

Sajed Khan Meboob Khan,

Age-48 Yrs, Occ. Business, R/o CTS

No.11342, Municipal No.2-8-73,

Situated at Faizalpura, ST Colony,

Aurangabad.

..Plaintiffs

VERSUS

1- Girish Damodharao Chapalgaonkar,
Age-Major, Occ. Business, R/o 6-A,
Vrandavan Gardan, Jyotinagar,
Aurangabad.

**2- Syed Abdul Adil, (Deleted as per
order dated 25.03.2014 below
Exh.1)**

Age-49 Yrs, Occ. Business R/o Plot
No.7, Time Colony, Aurangabad

3- Purnawadi Nagari Sahakari Bank,
Beside Hotel Royal, Mondha Naka,
Aurangabad. Through its Branch **..Defendants.**
Manager

Ld. Counsel for Plaintiff : Shri A. N. Surti

Ld. Counsel for Defendant No.1 : Shri S. P. Bhujbal

Ld. Counsel for Defendant No.3 : Shri S. D. Ghayal

J U D G M E N T

(Delivered on 30th April, 2025)

This is a suit filed for declaration that the registered sale deed bearing No.788/2009 dated 09.03.2009 of House property CTS No.11342, Municipal No.2-8-73 about 417.10 Sq. Mtrs situated at Faizalpura ST Colony Aurangabad executed by defendant No.2 in favour defendant No.1 is null and void and not binding on the plaintiff. The plaintiff has further sought relief of perpetual injunction to restrain defendant No.1 from alienating, transferring or gifting the suit property.

In short, the case of the plaintiff is as under :

02- The plaintiff is the owner and possessor of property bearing CTS no. 11342, Municipal No. 2-3-73, admeasuring 417.10 sq. mt. situated at Faizalpura, ST Colony, at Aurangabad. He purchased said property from the Smt.Mangalabai Gopalrao Lande by a registered sale deed bearing no. 4952 of 2007 on 7.09.2007. The four boundaries of the said property is as under:

On or Towards the North (Uttar) -Road,

On or Towards the South (Dakshin) -M.S.E.B.

On or Towards the East(Purva) Office- Road.

On or Towards the West(Panchhim) -Road.

(Hereinafter, said property is referred to as “the suit property”)

03- It is further stated that the construction on the suit property is on the area to the extent of 21.55 sq. meters. However, due to the financial crises, he decided to sell the suit property along with the built up area. For the purpose of selling the suit property, the plaintiff executed a power of attorney in the name of

defendant No. 2. But, he reserved the right to receive the amount of consideration after selling the suit property.

04- It is further stated that defendant No. 2 without informing the plaintiff and without his prior permission executed a registered sale deed bearing No.788/2009 in the name of defendant No. 1 and received consideration amount of Rs. 52,00,000/- (Rs. Fifty two Lakhs only) from defendant no. 1. The said amount was not received by the plaintiff. It is therefore, stated that the said sale deed dated 9.3.2009 is not binding upon him.

05- It is further stated that the plaintiff never handed over possession of the suit property to defendant No. 1 as per alleged sale deed. The plaintiff is in continuous possession of the suit property till today. It is stated that defendant No. 3 Bank's personnel visited the plaintiff's residence and affixed the possession notice thereon on 5.3.2012. The plaintiff made inquiry to the said persons and came to know that the suit property was sold to defendant No. 1 by defendant No. 2 and defendant No. 1 has mortgaged it to defendant No. 3 bank.

06- It is further stated that after possession notice affixed at the house of the plaintiff by defendant no. 3, he has filed securitization application No. 37 of 2012, before the Hon'ble Debts Recovery Tribunal at Aurangabad. In the said application, notices are issued and matter is kept for reply.

07- It is further stated that the plaintiff is in possession of the suit property and he is paying the municipal taxes, water charges and property taxes. He has given a public notice for cancellation of General power of Attorney executed in the name of defendant No. 2 and also has filed an application for cancellation of G.P.A. in the office of Sub-Registrar, Aurangabad.

08- It is further stated that the plaintiff is not bound by the sale deed executed by defendant No. 2 in favour of defendant No. 1. They are in collusion with each other. Defendant No. 2 had no authority to transfer the suit property to defendant No.1 without permission of the plaintiff. Hence, the plaintiff has filed this suit for declaration and perpetual injunction.

09- Defendant No.1 has resisted the suit by filing his written statement at **Exh.40**. It is stated that he has purchased the suit property vide registered sale deed bearing No. 788/2009 dated 09.3.2009 which came to be executed by defendant No. 2 being power of attorney holder of the plaintiff. He has admitted that the plaintiff executed Power of Attorney in favour of defendant No. 2. But, it is denied that, the plaintiff had reserved the right to receive the amount of consideration to be received while selling the suit property.

10- This defendant has further stated that the sale deed bearing No. 788/2009 dated 9.3.2009 bears signature of the plaintiff. It is therefore, denied that the plaintiff got knowledge

about the alleged sale deed, when he went to the bank after 5.3.2012. It is further stated that the plaintiff and defendant No. 2 personally handed over possession of the suit property to defendant No. 1. It is stated that the plaintiff has the knowledge of the sale deed under challenge since 9.3.2009. Therefore, instant suit is barred by law of limitation. On the aforesaid grounds, defendant No.1 has prayed for dismissal of the suit.

11- Defendant No.3 has filed its written statement at **Exh.27**. It is admitted that the plaintiff has purchased the suit property from Smt. Mangalabai Gopalrao Lande. But, rest of the contents of the plaint are denied. It is stated that defendant No.1 is the owner of the suit property, since he has purchased the suit property from the plaintiff as per registered sale deed. Defendant No.1, thereafter, mortgaged the suit property for the security of the loan which he obtained from this defendant. It is pertinent to note that defendant No.1 has also executed registered mortgage deed in favour of this defendant. Therefore, it is denied that the plaintiff is the owner and possessor of the suit property on the date of filing of the suit.

12- It is further stated that the plaintiff handed over possession of the suit property to defendant No.1 on execution of the sale deed in his favour. Thereafter, since defendant No.1 failed to repay the loan amount with interest, this defendant has already taken over possession of the suit property in view of the registered mortgage deed executed by him in its favour. Therefore, it is

denied that the suit property is in possession of the plaintiff. It is stated that at present, the suit property is in possession of this defendant.

13- It is denied that the sale deed executed by the plaintiff through defendant No.2 is the result of collusion between defendant Nos.1 and 2. It is stated that on the basis of power of attorney executed by the plaintiff, defendant No.2 had every authority and power to transfer the suit property in favour of defendant No.1.

14- It is further stated that since the plaintiff was well aware about execution of the sale deed in favour of defendant No.1 as he signed the same for confirmation. It is stated that as per the sale deed, mutation was also sanctioned in respect of the suit property in revenue records in the name of defendant No.1. It is stated that the suit is hopelessly barred by law of limitation. On the aforesaid grounds, the suit is liable to be dismissed with heavy cost.

15- The issues are framed at **Exh.56**, which are reproduced for my determination along-with my findings and the reasons as under:-

Sr.No.

ISSUES

FINDINGS

- 1) Whether plaintiff proves that he is the In affirmative.
owner of suit property on the basis of sale

deed dated 07.09.2007 executed by Mangalabai Gopalrao Lande in his favour ?

- 2) Whether the plaintiff proves that defendant no.2 on the basis of Power of Attorney without informing him and without permission executed sale deed in favour of defendant No.1 bearing No.788/2004 ? In negative.
- 3) Whether plaintiff proves that the sale deed dated 09.03.2009 bearing No.788/2009 executed in favour of defendant No.1 is not binding upon him ? In negative.
- 4) Whether plaintiff proves his lawful possession over the suit property and obstruction to his possession at the hands of defendants ? In negative.
- 5) Whether suit is in limitation ? In negative.
- 6) Whether defendant No.3 proves that they are in possession of the suit property on the basis of registered mortgage deed ? In negative.
- 7) Whether plaintiff is entitled for declaration as prayed ? In negative.
- 8) Whether plaintiff is entitled for perpetual injunction ? In negative.

9) What order as to costs ?

As per final
order

10) What order and decree ?

As per final
order

REASONS

16- In support of his claim, the plaintiff has examined himself by filing his evidence affidavit at **Exh.61**. He has further placed on record documentary evidence along with list of document **Exh.62**, such as, sale deed dated 07.09.2007, P R. Card, General Power of Attorney dated 07.03.2009, public notice in newspaper dated 22.03.2012, copy of application dated 26.03.2012 given for cancellation of power of attorney, water charges receipts, property tax receipts, possession notice, hamipatra dated 04.07.2012, cheque with bank memorandum, memorandum of understanding dated 07.03.2009. The plaintiff has taken no efforts to get these documents exhibited.

Inspite of sufficient opportunity, the defendants have neither cross-examined the plaintiff nor adduced their oral and documentary evidence. Neither the learned counsel for the plaintiff, nor learned counsels for the defendants turned up for final arguments. Matter is more than ten years old. I therefore, proceed to deliver this judgment. I have carefully perused the record.

AS TO ISSUE NO.1 :-

17- It is not at all disputed by any of the defendant that the plaintiff acquired ownership of the suit property on the basis of

sale deed dated 07.09.2007 executed by Mangalabai Gopalrao Lande in his favour. I therefore answer this issue in affirmative.

AS TO ISSUE NOS.2, 3 AND 4 :-

18- Admittedly, the plaintiff executed registered power of attorney bearing No.788/2009 dated 07.03.2009 in favour of defendant No.2 wherein he authorized and empowered defendant No.2 to sell, to mortgage, to lease or to gift the suit property to anyone as his power of attorney. The said registered power of attorney is placed by the plaintiffs on record document at serial No.3 of list of document **Exh.62**. It is nowhere mentioned therein that defendant No.2 being his power of attorney would have no authority to receive the consideration amount from the vendee on execution of sale deed in his favour in respect of the suit property. It is pertinent to note that, the sale deed executed by defendant No.2 in favour of defendant No.1 is placed on record by the plaintiff along with list of documents **Exh.4**. The said sale deed bears signature of defendant No.2 as power of attorney of the plaintiff and also of the plaintiff himself as the vendors. Therefore, the contention of the plaintiff cannot be believed or accepted that the said sale deed was executed by defendant No.2 in favour of defendant No.1 without his permission. It is seen from the record that the plaintiff issued letter to the Sub-Registrar, Aurangabad, document at serial No.5 of list of documents **Exh.62**, and issued public notice, document at serial No.4 of list of documents **Exh.62** to cancel the power of attorney executed in favour of defendant No.1. Defendant No.2 was duly empowered to execute sale deed in

favour of defendant No.1. Therefore, said registered sale deed is very much binding on the plaintiff.

19- The plaintiff himself has claimed that defendant No.1 mortgaged the suit property to defendant No.3 for taking a loan and defendant No.3 also initiated action in respect of the suit property by issuing possession notice. The plaintiff has also contended that he has filed securitization application No.37/2012 before the Hon'ble Debts Recovery Tribunal at Aurangabad. Therefore, there is no reason to believe that the possession of the suit property was not handed over to defendant No.1 and it is still in possession of the plaintiff. Thus, no question arises for the defendants to disturb his possession over the suit property. I therefore, answer these issues in negative.

AS TO ISSUE NO.5:-

20- In the instant suit the plaintiff is seeking declaration that the registered sale deed bearing No.788/2009 dated 09.03.2009 in respect of the suit property is null and void. This suit is filed on 26.06.2012. Article-59 of the Limitation Act 1963 provides that the plaintiff has to file a suit to cancel or set aside an instrument or decree or for the rescission of a contract within a period of 3 years, when the facts entitling him to have the instrument or decree canceled first become known to him. As stated earlier, the plaintiff himself is the signatory to the registered sale deed executed in favour of defendant No.1 on 09.03.2009. On the same day, he got the knowledge of execution of said sale deed.

The plaintiff ought to have filed this suit within 3 years from said date. But, the suit is filed on 26.06.2012. Therefore, it has to be concluded that the suit is not filed within limitation. I therefore answer, this issue in negative.

AS TO ISSUE NO. 6 :-

20- Defendant No.3 has adduced no oral or documentary evidence on record to prove that they are in actual possession of the suit property. I therefore, answer this issue in negative.

AS TO ISSUE NOS. 7 TO 10 :-

21- In view of my answers to issue Nos. 1 to 5, it is to be concluded that the plaintiff is not entitled to reliefs of declaration and perpetual injunction as prayed. Consequently, the suit is liable to be dismissed with costs. I therefore answer issue No. 7 and 8 in negative and in answer to issue Nos. 9 and 10 pass the following order.

ORDER

- 1 The suit is dismissed with costs.
- 2 Decree be drawn up accordingly.

(Declared in the open Court)

Place:- Aurangabad
Date :- 30-04-2025

(**Smt. A. D. Bose**)
Civil Judge, (Senior Division)
Aurangabad.

CERTIFICATE

I affirm that the contents of this PDF file Judgment are same, word to word, as per the original judgment.

Name of the Stenographer	:	A H Kulkarni
Court	:	CJSD Court, Aurangabad.
Judgment date	:	30.04.2025
Judgment signed by the Presiding Officer on	:	03.05.2025
Judgment uploaded on	:	03.05.2025