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**IN THE COURT OF THE SENIOR CIVIL JUDGE  
& JMFC., SHAHAPUR.**

Present: **Smt.Hema Pastapur, B.A., LL.B.**  
**SENIOR CIVIL JUDGE & JMFC., SHAHAPUR.**  
**R.A.No.17/2021**

**Dated this 06<sup>th</sup> day of April -2026**

**Appellant/  
Defendant No.1 :-**

1. Mohd. Irfan S/o Mohd. Osman Arkeri,  
Age: 41 years, Occ: Business, R/o  
Vidya Nagar, Shahapur.

**(By Sri.S.G.H., Advocate)**

**Versus**

**Respondent  
No.1/plaintiff  
and Respondent  
No.2/ Defendant  
No.2:-**

1. Taherabegum W/o Late Mohd. Osman  
Arkeri, Age: 80 years, Occ: Household,  
R/o Vidya Nagar, Shahpur.
2. Mohd. Imran S/o Mohd. Osman  
Arkeri, Age: 33 years, Occ: Business,  
R/o. Vidya Nagar, Shahapur.

**(Respondent No.1 by Sri. V.M.F.,  
Advocate and Respondent No.2 by  
Smt. P.N.J Advocate)**

Date and Nature of : Judgment and Decree passed in  
decree appealed O.S.No.185/2019 Dated: 29.08.2019  
by the Prl. Civil Judge and JMFC,  
Shahapur.

Date of institution : 05.10.2021  
of Appeal

Date of Disposal	:	06.04.2026		
Total Duration		Year/s	Month/s	Day/s
		04	10	27

### **J U D G M E N T**

That, the Appellant- Defendant No.1 in O.S.No.185/2019 on the file of the Prl. Civil Judge and JMFC, Shahapur, has preferred this Appeal under Section 96 R/W Order XLI Rule 1 of the Code of Civil Procedure, against the impugned Judgment dated: 29.08.2019. That, the respondent No.1 is the plaintiff and the respondent No.2 is the defendant No.2 therein. That, for the sake of convenience, parties in this Appeal are referred by their ranks as assigned in the trial Court.

#### **Suit schedule property is as under :-**

Residential House bearing CMC No.18-92 (New), 1-1-6/8 (old), situated at Vidyanagar, Shahapur, bounded by:-

East : House of Wajiuddin Jalahalli  
West : House of Khaja Hussain Jalahalli  
North : Way

South : House of Budansab Pinjar.

**Factual matrix of the case are as under :-**

1. That, the plaintiff is the mother of the defendants. That, originally the suit property was belonging to one Shri. Khajahussain S/o Rahemuddin Jalhalli- brother of the plaintiff. That, the said Khajahussain on 02.04.1988 had gifted the suit property to the plaintiff by way of oral Hiba. That, from the date of said oral hiba the plaintiff is in peaceful possession and enjoyment of the suit property.

2. That, in the year 2011 the plaintiff had fill ill i.e, she was suffering from neurological disease and due to which she lost her thinking capacity for a period of more than six years. That, the defendants taking undue advantage of the mental illness of the plaintiff have got executed in their favour the registered Gift deed document bearing No.736/11-12 dated:- 16.05.2011 in respect of the suit property and colluding with the CMC, authorities have got mutated

their names in the records. That, the said gift deed is null and void and not binding on the plaintiff.

3. That, recently the plaintiff fully recovered from the said disease. That, when she came to know about the said illegal acts of the defendants she had asked them for moving the application before the CMC, Shahapur, for mutating her name in respect of the suit property, but, they have failed to heed her words. Hence, the plaintiff has knocked the doors of justice.

4. That, on suit summons being served, the defendant No.2 has appeared before the trial Court through his learned counsel and the defendant No.1 remained absent and he was placed as *exparte*.

5. That, the defendant No.2 filed his written statement, wherein he admitted the case of the plaintiff and submitted for decreeing the suit.

6. That, on the basis of the pleadings of both the parties, the following issues were struck:-

1. Whether the plaintiff proves that, she

is the absolute owner and possessor of suit property ?

2. Whether the plaintiff proves that, registered gift deed bearing document No.736/11-12, dated:- 16.05.2011 is null and void and not binding upon the plaintiff ?
3. Whether the plaintiff is entitled for the relief as sought for?

7. That, the plaintiff to demonstrate her said contentions has deposed herself as PW-1 and got marked the documents at Exs.P1 to 7 and closed her side.

That, the defendant No.2 has not led either oral or documentary evidence on his behalf.

8. That, the learned trial Court considering the materials place on record, on 29.08.2019 had decreed the suit. That, feeling aggrieved with the said Judgment and Decree, the defendant No.1 has preferred this Appeal on the following grounds that:-

- i. the Judgment and Decree passed by the trial Court is against the principles of law and natural justice.
- ii. the plaintiff herself had gifted the suit property to the defendants and at the time of executing the said gift deed she was in second state of mind and the defendants have not committed any force, fraud, mischief and coercion in executing the said deed.
- iii. the plaintiff was not suffering from illness and only on the instigation of the defendant No.2 who is working in the Judicial department she had instituted the suit under Appeal.
- iv. in the said suit summons were not served upon the defendant No.1.
- v. the findings given by the trial Court on all the issues are not correct. Hence, the said Judgment and Decree is liable to be set aside.

9. That, the defendant No.1 claimed for remanding the suit to the trial Court for fresh disposal.

10. That, this Appeal the plaintiff is defendant No.2 has appeared through his learned counsel. That, the TCR has secured.

11. That, I have heard the arguments and perused the materials placed on record. That, the defendant No.1 has submitted his written arguments and I have gone through the same. That, the following points arise for My consideration and determination :-

1. Whether the Judgment and Decree passed by the trial Court is perverse and requires interference of this Court ?
2. What order or decree ?

12. That, on careful re-evaluation of the materials placed on record, My answer to the aforesaid points are as under:-

Point No.1 :- In the **AFFIRMATIVE**

Point No.2 :- As per the final order  
for the following :-

### **REASONS**

13. **Point No.1:-** That, as I have already narrated the facts of the case, without reproducing the same again I would like to find out whether there is any substance in the grievance vendicted by the defendant No.1.

14. That, the defendant No.1 has contended that the plaintiff herself had executed the alleged gift deed in favour of the defendants and at the time of executing the said gift deed she was not suffering from any kind of neurological disease and only on the instigation of the defendant No.1 who is working in the Judicial department had instituted the suit under Appeal.

15. That, the defendants No.1 has further pleaded in the appeal memo that in the said suit summons were not served upon him.

16. It is pertinent to note her that, from the trial Court records it appears that the suit summons was served upon the defendant No.1 through RPAD. That,

the defendant No.1 has not explained why he had not appeared before the trial Court inspite of receiving the said summons, but, that alone cannot be a ground to deny him the right to contest the suit. It is to be noted here that, when the suit involves rights over immovable properties, in the interest of justice the defendant No.1 is required to be given an opportunity to contest his claim. That, there are grounds to remand the suit for fresh disposal in accordance with law. That, without touching to the merits of the case and the correctness of reasons assigned by the trial Court in decreeing the suit, the suit has remanded to the trial Court for disposal in accordance with law. Accordingly, point No.1 is answered in the **AFFIRMATIVE**.

17. **Point No.2:-** That, as discussed on point No.1, I proceed to pass the following:-

**ORDER**

That, the Appeal filed by the Appellant-defendant No.1 under Section 96 R/W Order

XLI Rule 1 of the Code of Civil Procedure, is hereby allowed on costs of Rs.2,000/-.

That, the Judgment and Decree passed by the trial Court in O.S.No.185/2019 dated: 29.08.2019 is hereby set aside.

That, the suit is remanded back to the trial Court for fresh disposal. That, the both the parties are directed to appear before the trial Court on 29.06.2026 without waiting further notice from the trial Court.

That, the defendant No.2 is hereby directed to file his written statement within 15 days from the date fixed for appearance before the trial Court.

That, the trial Court shall give the opportunities to both the parties to lead their evidence and dispose the suit in accordance with law.

That, both the parties shall co-operate the trial Court for early disposal of the suit.

That, draw the decree accordingly.

That, the office is to re-transmit the trial Court records forthwith along with copy of this order.

(Directly dictated to the stenographer, typed by him, corrected by me and then pronounced in the open Court on this 06<sup>th</sup> day of April- 2026).

**(Hema Pastapur)**  
**Sr. Civil Judge & JMFC,**  
**Shahapur.**