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Presented on : 25/06/2014.

Registered on : 25/06/2014.

Decided on : 21/12/2016.

Duration : Ys. Ms. Ds.  
02 05 26

**IN THE COURT OF ADDITIONAL JUDGE, SMALL CAUSES  
COURT AND JOINT CIVIL JUDGE, SENIOR DIVISION, PUNE.**

**(Presided over by Harsha C. Shende-Kulkarni)**

**Spl. Civil Suit No.839/2014**  
**Exh.**

1. **Shri Sharadchandra Narayan Joshi.**  
Age : 64 Yrs., Occupation : Agriculturist.  
Res. At 'Sarth', Plot No.35, Kshipra Society,  
Karve Nagar, Pune 411 0052.  
The Power of Attorney holder of 2 to 23.
2. **Shri Maruti Kisan More,**  
Age : 77 Yrs., Occupation : Retired.  
Res.At Dattawadi, Pune.
3. **Shri Narayan Kisan More,**  
Age : 66 Yrs., Occupation : Business,  
Res. At 213, Rasta Peth, Pune 411 011.
4. **Shri Avi Gopal More,**  
Age : 42 Yrs., Occupation : Business.  
Res. At Varje Malwadi, Pune – 411 029.
5. **Shri Dilip Gopal More,**  
Age : 44 Yrs., Occupation : Service.  
Res. At Varje Malwadi, Pune – 411 029.
6. **Sou Sunita Shivaji More,**  
Age : 32 Yrs., Occupation : Agriculturist.  
Res at Khamgaov Maval, Tal. Haveli,  
Dist.:Pune.

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7. **Shri Tanaji Shivaji More,**  
Age : 34 Yrs., Occupation : Agriculturist.  
Res. At khamgao Maval, Tal. Haveli,  
Dist.Pune.
8. **Shri Laxman Kisan More,**  
Age : 45 Yrs., Occupation : Service.  
Res. At Janata Vasahat,  
Near Ram Temple, Pune.
9. **Sou Housabai Ramchandra Mate,**  
Age : 65 Yrs., Occupation :House-hold,  
Res. At Village Khadakwasala, Pune.
10. **Sou Anubai Narayan Mate,**  
Age : 60 Yrs., Occupation : House-hold.  
Res. At village Khadakwasala, Pune.
11. **Sou. Parubai Vitthal Kanchan,**  
Age : 50 Yrs., Occupation : House-hold.  
Res.at Wagholi village, Pune.
12. **Shri Anil Pandurang More,**  
Age : 40 Yrs., Occupation : Service.  
Res. At kirkatwadi, Pune.
13. **Shri Subhash Ramchandra More,**  
Age : 50 Yrs., Occupation : Agriculturist.  
Res. At Khamgao Maval, Tal. Haveli, Dist. : Pune.
14. **Shri Nathu Dattu More,**  
Age : 60 Yrs., Occupation : Agriculturist.  
Res. At Khamgao Maval, Tal. Haveli,  
District : Pune.
15. **Sou Droupati Baban Thopate,**  
Age : 65 Yrs. Occupation : House-hold.  
Res. At 213, Rasta Peth, Pune 11.
16. **Sou Chabubai Narayan Navghane,**  
Age : 50 Yrs. Occupation : House-hold.  
Res. At Dhairi Village, Pune.

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17. **Smt. Chandrabai Dattatraya More,**  
Age : Adult, Occupation : House-hold.  
Res. At Khamgao Maval, Tal. Haveli,  
District : Pune.
18. **Smt. Sitabai Gopal More.**  
Age : Adult, Occupation : House-hold.  
Res. At Varje Malwadi, Pune.
19. **Smt. Latabai Shivaji More,**  
Age : Adult, Occupation : House-hold.  
Res.At Khamgao Maval, Dist.:Pune.
20. **Sou Sunanda Dnyanoba Sanas,**  
Age : Adult, Occupation : House-hold.  
Res.At Dhayri Village, Pune.
21. **Sou. Kalpana Suresh Mate,**  
Age : Adult, Occupation : House-hold.  
Res.at Khadakwasala Village, Pune.
22. **Sou Bebinanda Vilsa Dudhane,**  
Age : Adult, Occupation : House-hold.  
Res. At Khadakwasala Village, Pune.
23. **Sou Indira Vitthal Darhavatkar,**  
Age : Adult, Occupation : House-hold.  
Res.At Khadakwasala Village, Pune.

.... Plaintiffs.

**Vs.**

Late **Shri Vitthal Shivappa Amin** through  
His legal heirs and for self;

1. **Shri Dipak Vitthal Amin,**  
Age: 43 Yrs. Occupation : Service.
2. **Sou Vanita Dipak Amin,**  
Age : 37 Yrs., Occupation : House-hold.

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Both R/o 1B/1203, N.G. locality phase -2,  
Thaku village Kandivali (East),  
Mumbai 400 101.

.... Defendants.

**APPEARANCES :**

Shri D.S.Joshi, Adv. for plaintiffs.  
Shri M.G. Shende, Adv. for Defendants.

**: ORAL JUDGMENT :**

( Delivered on this 21<sup>st</sup> day of December, 2016 )

1] This is a suit filed by plaintiffs for cancellation of Sale-Deed, for declaration and injunction.

2] The facts of the suit in nutshell are as under :

The plaintiff Nos. 2 to 23 are the owners of property described in Para No.1 of the plaint. They all have executed Power of Attorney on 09/07/2004 in favour of plaintiff No.1 and thereby delegated all their rights, title and interest in favour of plaintiff No.1. On the basis of said Power of Attorney, the plaintiff No.1 entered into Sale-Deed dt. 14/10/2004 having registration No. 6087/04 with the defendant. As per the provisions of Land Revenue Act, the purchaser is required to be a agriculturist. The facts suppressed by the defendant from the plaintiffs so the mutation entry not taken in the name of defendants. The defendants are non resident Indian so they cannot purchase land in India but the same has not been disclosed by the defendants. Mr. Vitthal Shivappa Amin in January 2005, contacted with the plaintiff on phone. He is one of the purchaser of the suit property. It has further informed that Mr. Vitthal Amin will come to Pune and execute the deed of cancellation in respect of the suit

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property. Thereafter, so many conversations taken place in between plaintiffs and defendants. Defendant No.1 put up his offer of Rs. 6,50,000/- to 7,00,000/- as a consideration for cancellation of Sale-Deed and lastly, the defendant No.1 agreed the amount of Rs. 6,75,000/-.

Further, as per plaintiff, the plaintiff thereafter, raised the amount by selling his personal land. It was confirmed by the defendant that they will come to Pune for collecting the amount and for executing the deed of cancellation in respect of the suit property. The plaintiff prepared the draft of deed of cancellation for its registration by paying requisite stamp. He also prepared account payee cheque for the amount of Rs. 6,75,000/-. The defendant thereafter visited the office of Sub Registrar on 09/05/2014 signed the draft of deed of cancellation, affixed their photographs. They all were in que for getting the deed registration but the defendant suddenly stood up and returned the cheque of Rs. 6,75,000/ to Mr. Anand Joshi made demand of Rs. 20,00,000/- instead of Rs.6,75,000/- and left for Mumbai immediately. On 15/06/2014, plaintiff and defendant visited to the office of Adv. Mr. Joshi, where defendant gave threats to the plaintiffs.

As per the further contention of the plaintiff, that he is ready and willing to pay the consideration amount of Rs. 6,75,000/- to defendants. It is, therefore, necessary to direct the defendant to execute and registered deed of cancellation and return the previous Sale-Deed.

3] In respond to the suit summons, the defendant Nos. 1 and 2 have appeared and filed their Written Statement / Say at **Exh.21**.

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According to them, the suit is no true and legal.

Further, it is denied by the defendant that, the plaintiff Nos. 2 to 23 delegated all the legal rights, title in favour of the plaintiff No.1 by any alleged Power of Attorney except the right to sell the suit property. It is accepted by the defendants that, the suit property sold by the plaintiff No.1 to defendant Nos. 1 and 2 by duly registered Sale-Deed dt. 14/10/2004 bearing No. 6087/2004. It has been denied by the defendants that they are not agriculturist and NRI and cannot purchase the property and that late Mr. Vitthal intimated to the plaintiff to prepare any cancellation deed and it is also denied that, the defendants agreed accordingly.

According to the defendants, the suit of the plaintiff is time barred, deserves to be dismissed. They never had demanded Rs. 20,00,000/-. The entire suit of the plaintiff is frivolous, not properly valued. The plaintiff is not entitled for any such relief as prayed by them. The suit therefore requires to be dismissed with costs of Rs. 50,000/-

4] From the rival pleadings of the parties and documentary evidence on record, I have framed issues at Exh.27 and findings thereon are for the reasons stated thereto.

### **ISSUES**

### **FINDINGS**

1] Whether the suit is barred by law of limitation?

.. In the affirmative.

2] Is the suit is properly valued?

.. In the affirmative.

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- 3] Do the plaintiff prove that the defendant by visiting to office of Sub Registrar, had signed the deed of cancellation on 09/05/2014? .. In the affirmative.
- 4] Do the plaintiffs prove that the defendant No.1 had demanded Rs. 20,00,000/- instead of Rs. 6,75,000/- from him? .. In the affirmative.
- 5] Is the plaintiffs entitled for reliefs claimed? .. In the negative.
- 6] What order and decree? .. As per final order. Suit is dismissed.

**: REASONS :**

5] The plaintiff Mr. Sharadchandra Narayan Joshi examined himself (P.W.1 **Exh.29**) and has filed Power of Attorney **Exh.32**, office copy of the letter dt. 18/04/05 **Exh.33**, UPSC **Exh.34**, letter dt. 05/09/05 given to Mr. Vitthal Amin **Exh.35**, under post registration certificate **Exh.36**, the copy of letter dt. 03/10/05 given by plaintiff to Mr. Vitthal Amin **Exh.37**, UPSC **Exh.38**, the record public data entry showing the payment of stamp for deed of cancellation **Exh.39**. The voucher dt. 09/05/2014 having signature of Deepak Amin **Exh.40**. The cheque is at **Exh.41**. The challan showing payment for stamp at **Exh.42**. The deed of cancellation **Exh.43**. Affidavit U/s 65(b) of the Evidence Act **Exh.44**. The CD of email between plaintiffs and defendants with certificate **Exh.45**.

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**AS TO ISSUE NOs.1 to 5 :-**

6] No doubt, the defendant No.1 after filing Written Statement and say never had appeared in this matter for giving their evidence and they have not taken down cross-examination of the plaintiffs also but as per the Written Statement filed by the defendants, they have right to purchase land, they never had agreed to execute the deed of cancellation and suit is time barred.

On contrary, as per the suit and evidence of the plaintiffs, the defendants have agreed to execute the deed of cancellation by taking consideration of Rs. 6,75,000/-. Further, as per them, the defendants by coming to the office of Registrar, signed the deed of cancellation and thereafter, by making demand of Rs. 20,00,000/- left the office without executing the said deed of cancellation for which, the plaintiffs are asking directory orders. In fact, there is no specific relief asked by the plaintiffs for cancellation of the previous Sale-Deed, which alleged to have been executed on 14/10/2004 and registered having registered No.6087 between the parties.

So let us analyzed the evidence of the plaintiffs to find out whether they are entitled to have orders and decree in their favour?

7] As per the evidence of the plaintiffs, he is a Power of Attorney for rest all plaintiff Nos. 2 to 23. The suit property was sold by plaintiffs to the defendants for consideration of Rs.2,20,000/- vide the Sale-Deed No.6087 dt. 14/10/2004 . But the defendants were not agriculturist at the relevant time and they were not residing in India so the transaction was not legal. The names of the defendants were not mutated in the Record of Rights of the suit land so the defendants, i.e.,



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Mr. Vitthal Amin, who is father of defendant Nos. 1 and 2 decided to cancel the said Sale-Deed No. 6087, by informing it to the plaintiffs on phone. Accordingly, the plaintiff No.1 made all preparation. As per contention of plaintiff, this exchange of talks on phone through correspondence and email was going since 2005.

8] Here, it is very important to mention that the first letter dt. 18/04/2005, which is at **Exh.33** sent by the plaintiffs to Shri Vitthal Shivappa Amin, who is one of the purchaser and father of defendants. The plaintiffs, through the letter **Exh.33** and thereafter, through letter dt. 05/09/2005 and 03/10/2005, which are respectively at **Exh.35** and **Exh.37**, and are send by Under Certificate of Post, opined that he is ready to pay amount, i.e., Rs. 2,14,300/-, as agreed between them and also requested Mr. Vitthal Amin to come for getting the Sale-Deed cancelled, which was executed between them and registered at Sr. No.6087.

Further, it is important to mention that, in the letter dt. 18/04/2005, which is at **Exh.33** and in a letter dt. 03/10/2005, which is at **Exh.37**, it has been categorically mentioned by plaintiff that, as per the wish of Mr. Vitthal Amin, who is no more alive, the plaintiffs have already sold the suit property to the third person but he cannot refund amount to defendant unless the deed of cancellation of the above mentioned Sale-Deed executed in between them. The plaintiffs through that letter requested Mr. Vitthal Amin to come and execute the deed of cancellation.

9] Here, I would like to stop to make it clear that, so far as issue No.2 that whether the suit property is properly valued is

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concerned, as per the plaintiffs, they have paid the stamp on the amount mentioned in the draft of deed of cancellation, which is at **Exh.43**. The amount mentioned in the deed of cancellation is Rs. 6,75,000/-.

As mentioned earlier, the defendants not stepped into the witness box. The stamp on amount of Rs. 6,75,000/ paid by the plaintiffs so I am of the opinion that the suit is properly valued.

Then, so far as the issue Nos. 3 and 4 are concerned, as the defendants never stepped into the witness box to give the counter-blast to the contention of the plaintiffs that the defendant Nos. 1 and 2 visited to the office of Sub Registrar, signed the deed of cancellation on 09/05/2014 and thereafter, demanded Rs. 20,00,000./- instead of Rs. 6,75,000/-from the plaintiffs for executing the deed of cancellation is concerned. As mentioned above, the defendants neither objected the said contention and evidence of the plaintiffs by leading any evidence from their side nor they have cross examined plaintiff to quash his contention and evidence.

So I am of the opinion that, on the background of the draft of deed of cancellation **Exh.43**, which bears signature of defendant Nos. 1 and 2 with the specific contention made therein that the defendants came for preparing the draft for deed of cancellation of the Sale-Deed having reregistration No. 6087. As the deed of cancellation not comes to an logical end by its registration thereafter, the evidence of plaintiff appears probable and acceptable that the defendants might have demanded extra amount, as alleged by the plaintiffs even after making signature on the draft of deed of cancellation.

At the cost of some repetition, I am constrained to mention here that, as the defendants failed to step into the witness box, to quash the

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testimony of the plaintiffs, so I have no other option but to accept that, the defendants have signed the draft of deed of cancellation and demanded amount of Rs. 20,00,000/- from the plaintiffs instead of Rs. 6,75,000/- without executing the deed. The plaintiffs with the help of his oral evidence, which goes unchallenged and with the documents on record succeeded in proving that the draft of deed of cancellation signed by the defendants and they by making demand of Rs. 20,00,000/- from plaintiffs left the office.

10] Now, the question then comes whether the plaintiffs are entitled for the relief claimed by them, by way of this suit.

Now, we have to start with prayers of plaintiff for which the suit came to be filed.

The plaintiffs in a suit Para No.22-A, requested the Court to direct the defendants to execute the deed of cancellation dt. 09/05/2014, which is signed by the defendants by affixing their photographs and also to direct the defendants to collect the amount of Rs. 6,75,000/-.

Further, it is added by the plaintiffs that the defendants be directed to return the original Sale-Deed No.6087/04 dt. 14/10/2004 with Index II to the plaintiffs and he also asked to restrain the defendants permanently from creating any third party interest, right over the suit property on the basis of Sale-Deed dt. 14/10/2004.

Again at the cost of repetition, I would like to mention that this Court already concluded that, because of the absence of defendants, during trial of suit and as they never entered into the witness box to give counter-blast to the evidence of the plaintiffs, the plaintiffs succeeded in proving that the defendants have signed the draft of deed

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of cancellation **Exh.43** in which, they agreed to cancel the Sale-Deed No.6087/04 for amount of Rs. 6,75,000/-. But I am of the firm opinion that the said draft not put up for registration before the Registrar, so the same was not finalized so this suit came to be filed.

Then we have to move further and focus on objection of limitation of filing suit, as the defendants have very specifically raised the said objection about filing time barred suit by plaintiff.

Here, it is very interesting mention that the first letter which according to the plaintiffs sent by him to Mr. Vitthal Amin is dt. 18/04/2005, which is filed by him at **Exh.33** in which, for the first time, the plaintiff informed to the father of defendants that, 'after request of Mr. Amin, the plaintiffs would get a buyer in the same month and have already executed Sale-Deed in his favour as during last few months, Mr. Vitthal Amin have not registered his name on the 7/12 extract of the land, which involved in this matter.'

Thereafter, the same information is given by the plaintiffs to Mr. Vitthal Amin by letter dt. 05/09/2005 **Exh.35** and again, by the letter dt. 03/10/2005 **Exh.37**, in which, the plaintiffs reiterated that, 'it is to be noted by Mr. Vitthal Amin that the plaintiffs wish to close this transaction, i.e., transaction in question as early as possible and already the land in question was sold as per the request of Mr. Vitthal Amin. But the plaintiffs could not refunded the money , as the Sale-Deed was not cancelled, i.e., the said in question, which is registered at Sr. No. 6087/04.'

The defendant Nos. 1 and 2 have filed their Written Statement (**Exh.21**) as mentioned above, in which, they have made specific contention that the suit is time barred. So the issue No.1 about limitation is framed.

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Here, it is worth to mention that, the plaintiffs through their evidence, brought on record the letters dt. 18/04/2005 **Exh.33**, 05/09/2005 **Exh.35**, 03/10/2005 **Exh.37**. If we go through the contents of the letters, which wrote by the plaintiff No.1 to Mr. Vitthal Amin, then it reveals that, by the letter dt. 18/04/2005, the plaintiffs informed to the father of defendants that as per his request, the plaintiffs have already executed Sale-Deed in favour of one other buyer and the property has already been sold by him.

In my opinion, for the first time, i.e., on 18/04/2005 when according to contention of letter of plaintiffs **Exh.33**, he already sold the suit property to the third buyer, the plaintiff came to know that the said Sale-Deed having registration No.6087/04 is required to be cancelled because it does not have any force. Thus, the requirement of cancellation deed in respect of previous Sale-Deed was well within the knowledge of plaintiffs at least since 18/04/2005. The last letter dt. 03/10/2005, which was wrote by the plaintiffs to late Mr. Vitthal Amin expressed the same facts that the plaintiffs want to close all the transaction regarding the suit land, which was taken place in between plaintiffs and Mr. Vitthal Amin because the plaintiffs had already sold out the suit land to other.

Here, I am constrained to mention here that, the specific objection taken by the defendants that the suit is time barred because the plaintiff was having knowledge about cancellation of Sale-Deed since 18/04/2005.

At this background, I would like to perused the provisions given under the law of limitation for filing the suit for cancellation of any deed.

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As per Article 59 of the Limitation Act, which runs as under :

| Description of suit                                                                                | Period of limitation | Time from which period begin to run                                                                                                                 |
|----------------------------------------------------------------------------------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Art.59.</b> To cancel or set aside an instrument or decree or for the rescission of a contract. | Three years          | When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. |

So as per provision, the limitation for filing suit or cancellation of deed is three years from the date of knowledge.

Here, in this matter, if the plaintiffs came to know that the Sale-Deed No.6087/04 requires to be cancelled since 18/04/2005 and lastly on 03/10/2005, as it appears from the letter **Exh.33** and **Exh.37**, then the plaintiffs would have file this suit on or before end of October 2008, but the said suit has been filed by him in the year 2014. In my opinion, the plaintiffs got firmed knowledge that the Sale-Deed No.6087 requires to be cancelled since 2005.

As per settled provision of law, once, the limitation starts, it can not be stopped stretched further because of any reason and it is beyond imagination of anybody.

Here, we must note that, the plaintiffs though tried to put up before the Court that they want the orders asking the defendants to execute the deed of cancellation, but actually it is a prayer of cancellation of Sale-Deed No. 6087/04 dt. 14/10/2004. Actually, the deed of cancellation also not executed in between plaintiffs and defendant Nos. 1 to 3 so it remains as a draft only, as finality has not been given to it.

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11] In the above mentioned circumstances, though it is accepted that the plaintiffs succeeded in proving that the defendants came in office of Sub Registrar, signed the draft of deed of cancellation but it is clear from the evidence and record brought before Court by plaintiff that the plaintiff was having knowledge of the cancellation of the Sale-Deed since 2005.

The provisions of the Limitation Act does not allow any person to file the suit after expiry of limitation to file it except for certain circumstances which are given in Section 4 to 24 of the Limitation Act. The limitation once starts cannot be stopped or stretched or extended. As I have already made it clear that it was well within the knowledge of the plaintiffs that the above Sale-Deed No.6087/04 in respect of the suit property is required to be cancelled since 2005, the plaintiffs failed to file the suit on or before end of October 2008 so I am of firm view that the suit is time barred.

The plaintiffs in the above circumstances, not entitled for any relief claimed by them. Hence, by answering issue Nos. 1 to 4 in the affirmative and issue No.5 in the negative, proceed to pass following order:

**: ORDER :**

1. The suit is dismissed.
2. No order as to costs.
3. Decree be drawn up accordingly.

PUNE.  
DATE : 21/12/2016.

(Harsha C. Shende-Kulkarni)  
Addl. Small Cause Judge,  
& Jt. Civil Judge, Sr.Dn., Pune.

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The the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of the Steno : V.A. Endgallu. (H.G)  
Name of the Court : Harsha C. Shende Kulkarni.  
Addl. Judge,  
Small Causes Judge, & Jt.  
Civil Judge, Sr.Dn., Pune.  
Date : 21/12/2016.  
Judgment signed by Presiding Officer on : 21/12/2016.



