



Received on : 21/10/2011

Registered on : 03/11/2011

Decided on : 15/01/2025

Duration : Ys. Ms. Ds.

13 02 25

(Time bound by Hon'ble High Court)

**IN THE COURT OF 5th ADDL. JUDGE SMALL CAUSES COURT, &
Jt. CIVIL JUDGE SENIOR DIVISION, PUNE, AT : PUNE.**

(Presided over by Pavan G. Tapadiya)

SPL. CIVIL SUIT NO. 2124/2011.

Exh. No.

CNR No. MHPU020057152011

Late Smt. Leela Ganesh Kale

Died During the pendency of suit,

Through her legal representatives

Mr. Girish Digambar Kulkarni.

... Plaintiff.

Versus

1) Smt. Sarita Suryakant Mhasawade,

Age- 53 years, Occu- Housewife,

2) Shri. Suryakant Gajanan Mhaswade,

Age- 53 years, Occu- Business,

3) Darode- Jog & Associates

A registered partnership firm

under the Indian Partnership Act, 1932

Having its registered office at

1258 Mathuchaya, Deccan Gymkhana,

Pune.

Through Partner,

Shri. Sudhir Chandrakant Darode,

Age- 49 years, Occu- Business,

4) M/s. Marathe Associates

Office at- 1179/3, Shivajinagar, Pune

Through its Partner

Shri. Siddharth Abhijeet Marathe,

Age- Adult, Occu- Business,

R/at- Revenue Colony, Modern Engineering

College road, Pune.

... Defendants.

Advocate for plaintiff

Advocate for defendant No. 1 & 2

Advocate for defendant No. 3

Advocate for defendant No. 4

- Shri. N. M. Shinde,

- Shri. S. P. Deo,

- Shri. Prashant Mohite,

- Ex-parte

**Suit for Declaration,
possession and injunction.**

J U D G M E N T**[Delivered on : 15.01.2025]**

This is a suit for declaration that, the plaintiff is lawful owner of the suit property. Further the plaintiff sought declaration that agreement dated 25/08/2000 and agreement dated 28/11/2000 as void-ab-initio, illegal and not binding on plaintiff. Further plaintiff sought possession of the suit property and for injunction.

2] At the outset it is needed to state here that Hon'ble Bombay High Court in **Writ Petition No. 6575/2023** passed order dated 19/01/2024 directed to finally adjudicate and complete hearing of suit within period of twelve months from date of order. i.e. **decide suit on or before 18/01/2025.**

Description of suit property:-

3] All that piece and parcel of property bearing Flat No. 101, admeasuring 1250 Sq.Fts situated at C.T.S. No. 1151 Final Plot No. 525, Shivajinagar, Pune within the limits of Pune Municipal Corporation and also within the limits of Sub-Registrar Taluka Haveli, Dist. Pune. The said property hereinafter referred as “Suit Property.”

The case of plaintiff is as follows :-

4] Husband of plaintiff namely Ganesh Shankar Kale was in service of Indian Army as a Brigadier and out of his self income, he had purchased Bungalow at Shivaji Nagar bearing CTS No. 1151 final plot No. 525. The plaintiff and Ganesh Kale had no issue out of wedlock. On 09/06/1977 Ganesh Kale, husband of plaintiff died leaving behind plaintiff as his only legal heir. Therefore, plaintiff became absolute owner of the said property and continued to enjoy the same as an owner.

5] The defendant No. 1 is niece of the plaintiff. The defendant No. 2 is husband of the defendant No. 1. They have developed cordial relations with the plaintiff. They used to visit plaintiff house with their nine months old child Miss. Gauri and used to place her in the lap of plaintiff saying that she is very happy with grand-mother. On account of this emotional, relationship was developed between plaintiff and daughter of defendant Nos. 1 & 2. Therefore, defendant No. 1 & 2 expressed to give their daughter in adoption to the plaintiff. The plaintiff being

issueless agreed to take the daughter in adoption. Accordingly, adoption-deed was prepared and asked the plaintiff to sign it. The plaintiff was not aware of the ill-intention of the defendants being given their daughter in adoption, blindly signed the adoption-deed on 22/05/1992 and the same is registered before Sub-Registrar Haveli No. 2 at serial No. 1442. After adoption the name of daughter changed from Miss Gauri to Miss. Chitra Ganesh Kale.

6] The plaintiff further submitted that, after adoption, the defendant No. 1 used to visit plaintiff's home to take care of basic needs of Miss. Gauri @ Chitra. As a child of tender age, the plaintiff allowed the defendant No. 1 to stay with her in the said property. Accordingly, the defendant No. 1 was started staying with plaintiff in the said Bungalow. After sometime in the year 2000 or thereabout, the defendant No. 1 requested the plaintiff that, she is unable to look after Gauri alone as she is growing child and needs more attention. Under said representation, the defendant No. 1 requested plaintiff to allow defendant No. 2 to reside with her in the said bungalow. Therefore, the plaintiff permitted defendant No. 2 to stay in the suit property alongwith her for paying attention to Miss. Gauri @ Chitra Kale.

7] The plaintiff further submitted that, in the year 2000 or thereabout the plaintiff desirous to develop the said bungalow through some developer. At that time defendant No. 2 suggested that, he will find out the developer and would get good consideration. The defendant Nos. 1 & 2 gave assurance that they

will take care of plaintiff's interest and could personally look after the transaction. On believing representation and assurance, the plaintiff permitted defendant No. 2 to find out developer for development of the property.

8] It is the further case of plaintiff that, in the month August 2000 the defendant No. 2 informed the plaintiff that, he has talked with a developer namely Sudhir Chandrakant Darode and Dhondiraj Anand Jog who are renowned developer and carrying business under the name and style "Darode-Jog Associates". During the course discussion the developer offer to the plaintiff that, in consideration of developing the suit property, they would give residential tenement / flat admeasuring 1250 Sq.Ft. salable built up alongwith car parking in addition to monetary consideration of Rs. 49,75,000/-. The defendant Nos. 1 & 2 represented the plaintiff that, offer given by developer is reasonable and proper as per prevailing market price. The plaintiff believes the representation and decided to give the said property for development. On 25/08/2000, the defendant No. 2 placed 2 to 3 documents before plaintiff representing that, said documents are power of attorney and consent letter to be given to the developer and asked the plaintiff to signed on the same. The defendant No. 2 informed that, said documents are proper and he had verified the same and plaintiff need not read it and can sign the same. Therefore, the plaintiff signed the documents without giving any thought to them. The plaintiff signed the said documents at her home under the genuine believe that documents are power of

attorney and consent letter to be given to the developer as represented by defendant No. 2. After signing the said documents, the defendant No. 2 informed that, he will hand over said documents to the developer.

9] The plaintiff further submitted that, a week after execution of said purported documents on 25/08/2000 asked defendant No. 2 to give copies of the said documents for record. At that time, defendant No. 2 represented that, he would take care of all the documents. The defendant Nos. 1 & 2 are very generous to the plaintiff, so the plaintiff did not feel it necessary to insist for the said copies. In the month November 2000, the defendant No. 2 again brought document purporting to be development agreement and informed the plaintiff that, by virtue of said documents the plaintiff would get consideration of Rs. 49,75,000/- in addition to residential flat. The defendant No. 2 also informed the plaintiff that, out of monetary consideration payable to the plaintiff, the said developer would pay some consideration to adopted daughter Miss. Chitra. The defendant No. 2 had asked the plaintiff to sign the said documents and therefore, the plaintiff signed the said agreement at her home. The plaintiff has also made provision for education for Chitra by investing in U.T.I. children balance growth fund.

10] It is the grievance of plaintiff that, she was shocked and surprised when in the year 2005 she received suit summons of R.C.S.No. 679/2005 filed by defendant No. 1 & 2 pretending

themselves as a next friend of Miss. Chitra Ganesh Kale. In that suit, the defendant Nos. 1 & 2 made various false allegations against plaintiff. The plaintiff resisted the suit by filing written statement. The plaintiff strongly suspected ill-intension of defendants and started making inquiry and asked developer regarding consideration. After repeated request, the developer in the year 2009 informed the plaintiff that, flat agreed to be given to Miss. Chitra was infact taken over by defendant Nos. 1 & 2 representing that, they were occupiers of 1250 Sq.Ft. area in the Bungalow. The developer has also informed that, she has confirmed the same. At that time, the plaintiff told the developer that, defendant Nos. 1 & 2 were never occupiers of said bungalow. At that time, developer handed over photocopy of document purported to be an agreement dated 25/08/2000. The plaintiff submitted that, somewhere in the month of December 2009 the plaintiff came to know about said agreement dated 25/08/2000.

11] It is specific case of the plaintiff that, plaintiff never had any intention to declare the defendant No. 1 as a occupier in the bungalow. The defendant Nos. 1 & 2 have taken undue advantage of the faith and confidence reposed by her in them and has obtained the signature of plaintiff on the said document dated 25/08/2000 misrepresenting her about nature and character of document. In fact, the flat which was to be allotted to Miss. Chitra as per her wish. The defendant Nos. 1 & 2 grabbed the said flat under so called purported agreement dated 25/08/2000. The plaintiff has never executed purported agreement dated

25/08/2000 voluntarily. The consent of plaintiff to the said so called agreement was obtained by representation and fraud. Therefore, the said agreement is not only fraudulent but only false, void-ab-initio and not binding on plaintiff.

12] The plaintiff further stated that, defendant Nos. 1 & 2 cannot claim any right on the suit property and said flat ought to have been given to Miss. Chitra exclusively as discussed and informed to developer. The defendant Nos. 1 & 2 have no concerned of whatsoever nature with Miss. Chitra as legally she is daughter of plaintiff. The defendant Nos. 1 & 2 illegally and unauthorized possessing the suit property. They have already obtained sum of Rs. 18,00,000/- from plaintiff under the grab of maintenance of Miss. Chitra. As such defendants have received suit property by taking undue advantage of her old and feeble physical condition. Suit property was given towards consideration of development of bungalow and therefore, plaintiff is entitled to claim the said flat as owner.

13] The plaintiff further submitted that, adopted daughter Miss. Chitra is not looking after her and is not coming to take care. The plaintiff earlier executed registered Will dated 14/10/2008 in favour of her nephew Mr. Girish Kulkarni thereby bequeathed all her movable and immovable properties to him since he is looking after the plaintiff. By the said Will the plaintiff has expressed to bequeathed suit property flat No. 101 in favour of adopted daughter Miss. Chitra Kale. However, Miss. Chitra is not coming to

the plaintiff and therefore, plaintiff has executed supplementary deed on 06/09/2011 and thereby bequeathed suit property to her nephew Mr. Girish Kulkarni. The plaintiff has also executed power of attorney dated 31/03/2010 in favour of Mr. Girish Kulkarni to do various act in her behalf.

14] The plaintiff lastly submitted that, the defendant Nos. 1 & 2 induced her to believe that, they are taking care of her interest and falsely represented the defendant No. 3 that, they are occupiers of the bungalow and under the said misrepresentation has obtained the execution of agreement dated 25/08/2000. Hence, plaintiff has not claimed any relief against defendant No. 3. On such grounds, the plaintiff prayed to declare that, she is owner of suit property, agreement dated 25/08/2000 and agreement dated 28/11/2000 as void-ab-initio, illegal and not binding on the plaintiff. Further sought consequential relief regarding declaration of and sought possession of the suit property.

15] During the pendency of the suit, original plaintiff Leela Ganesh Kale died. Thereafter, Mr. Girish Digambar impleaded being legal representatives of deceased plaintiff vide order below Exh. 24.

DEFENCE OF THE DEFENDANTS :-

16] The defendant Nos. 1 & 2 contested the suit claim by filing written statement at Exh. 18. The defendants have denied all the adverse allegations made in the plaint in toto. The defendants

have specifically denied allegations of misrepresentation and fraud.

17] It is the defence of defendant Nos. 1 & 2 that, defendant No. 1 is niece of Late Ganesh Kale. The defendant No. 1 brought up, educated and taken care by Late Ganesh Kale and plaintiff as her daughter. The defendant No. 1 was a family member of Late Ganesh Kale. After the marriage, the defendant Nos. 1 & 2 blessed with daughter namely Miss. Chitra. The plaintiff being affectionate towards the daughter of these defendants. Therefore, the plaintiff had requested the give their daughter in adoption for continuation of generation and also to inherit the property of Late Ganesh Kale. The plaintiff was signed adoption deed. Hence, these defendants denied any ill-intention behind adoption.

18] The defendant Nos. 1 & 2 further submitted that, after their marriage, the plaintiff insisted them to stay with her and therefore these defendants continued to stay in CTS No. 1151. They have resided in a separate accommodation as a licensee of the plaintiff.

19] In respect of development of property, these defendants submitted that, the plaintiff independently appointed developer and she has been decided consideration of development without any reference and involvement of these defendants. The plaintiff was aware about transaction, consequences thereof and

sufficiency of consideration. Whatever has been accepted, agreed and executed had been through clear understanding between the plaintiff and developer only. The plaintiff used to take decision on her own and she never depended on these defendants for any decision. Therefore, these defendants never misrepresented the plaintiff taking undue advantage of their relation.

20] These defendants further stated that, power of attorney holder namely Girish Kulkarni is relative from mother's side of plaintiff, son of real sister of plaintiff. The power of attorney holder and his mother were and are interested in the property of plaintiff since long. The residential flat of plaintiff (flat No. 103) is got transferred in the name of power of attorney holder. The power of attorney holder has manipulated and maneuvered the entire situation taking undue advantage of the health and feeble mind of plaintiff. These defendants have not accepted execution of alleged Will and stated that, the plaintiff was not in mental and physical condition at the relevant time. The alleged Will is creation of power of attorney holder Girish Kulkarni. It is a plan of the power of attorney holder to grab the property and therefore, supplementary Will is also a intrigue for the same purpose.

21] These defendants further submitted that, the plaintiff has received entire consideration as per agreement with the developer. Therefore, the developer has entire right of disposal of the other flats. The developer has recognized right of these

defendants as referred in the document. The defendant No. 1 is in occupation of 1250 Sq.Ft. area for more than eight years. Therefore, the developer agreed to give flat and to this transaction plaintiff given consent. A deed of apartment dated 13/12/2002 has been personally signed and accepted by the plaintiff. Therefore, the plaintiff is estopped from challenging the said document. The agreement dated 25/08/2000 entirely is the decision of the plaintiff with full knowledge of the contents therein. There was no conspiracy hatched by these defendants. In the year 2002 new building was constructed and flat No. 101 i.e. suit property has been occupied by these defendants since then as owners. Therefore, the suit is filed beyond the period of limitation. The developer never complaint about the right of these defendants. Nothing was misrepresented to the developer. The transaction of suit property is an independent transaction between these defendants and developer which is clearly consented by the plaintiff.

22] In respect of R.C.S.No. 679/2005 these defendants have stated that, Miss. Chitra adopted daughter is supposed to be the daughter of Late Mr. Ganesh Kale in his lifetime in view of “Doctrine of relation back”. She has all the right in the suit property of Late Ganesh Kale. Miss. Chitra was neglected due to intervention of plaintiff’s relative from mother side. No documents are conceal by this defendant as alleged during the pendency of R.C.S.No. 679/2005.

23] Lastly, the defendants submitted that, no cause of action has been occurred to sue. The suit has not been properly valued. The plaintiff has no right, title and interest in the suit property. On such grounds, prayed for dismissal of the suit.

24] The defendant No. 3 appeared through advocate but failed to file written statement. Hence, by an order dated 01/09/2012 the suit proceed without written statement of the defendant No. 3. It is also needed to state here that, at the time of final arguments, the defendant No. 3 appeared through advocate and file application for setting aside no written statement. The said application came to be rejected by this court vide order below Exh. 165.

25] During pendente lite, the defendant No. 4 impleaded in the suit. Suit summons duly served, but the defendant No. 4 remained absent. Hence, suit proceeded ex-parte against defendant No. 4.

26] Considering the rival pleadings, my Ld. predecessor judge has framed issues at Exh. 30. I have recorded my findings to each of issues for the reasons given below.

Sr.	<u>Issues</u>	<u>Findings</u>
1	Do plaintiff proves that, defendants No. 1 to 3 got executed agreement in respect of suit flat and obtained signature of original plaintiff on said agreement by misrepresentation ?	In negative

2	Do plaintiff proves that, she (original plaintiff) is lawful owner of suit flat ?	In negative
3	Do plaintiff entitled for declaration that agreement dated 25/08/2000 is illegal and void-ab-initio and required to be cancelled ?	In negative
4	Do plaintiff proves that, deceased Leela Kale executed supplementary will bequeathing suit property to her nephew ?	In negative
5	Is the suit within limitation ?	In negative
6	Is plaintiff entitled for possession of suit flat ?	In negative
7	Is plaintiff entitled for permanent injunction as claimed ?	In negative
8	What order and decree ?	...As per final order suit is dismissed with costs.

REASONS

27] PLAINTIFF EVIDENCE :-

In support of his claim, plaintiff Mr. Girish Kulkarni (P.W.No.1) filed his evidence affidavit at Exh. 74. Plaintiff also relied on evidence of P.W.No. 2 Sunil Sadashiv Mungale at Exh. 117. P.W.No. 3 Sou. Vandana Suhas Jadhav filed her evidence affidavit at Exh. 119. P.W.No. 4 Sou. Manik Aajgaonkar filed her evidence affidavit at Exh. 120 and P.W.No. 5 Shri. Sudhakar Balaji Chavan filed his evidence affidavit at Exh. 121. The plaintiff also relied following documentary evidence-

Sr.No	Nature of documents	Exhibit
1	Property card of S.No. 525	77
2	Notice of PMC for year 2011-2012 & 2013-2014	78 & 80

3	Payment receipt of PMC dt. 26/05/11 & 27/05/2013	79 & 81
4	Property tax notice dt. 17/11/2008	82
5	Death certificate of Leela Kale	83
6	Birth certificate of Durga	84
7	Certified copy of judgment in RCS 679/2005	85
8	Certified copy of Decree in RCS 679/2005	86
9	Agreement dt. 25/08/2000	87
10	General POA of Leela Kale dt. 06/09/2011	88
11	Copy of complaint dt. 25/11/2009	89
12	Certified copy of deed of confirmation	90
13	Certified copy of Supplementary agreement dt. 05/10/2002	91
14	Certified copy of deed of declaration dt. 10/12/2002	92
15	Certified copy of Civil Appeal No. 44/2012	140
16	Withdrawal pursis in Appeal No. 44/2012	141
17	Certified copy of evidence affidavit in RCS No. 679/2005	142
18	Certified copy of evidence in RCS No. 679/2005	143

28] Thereafter, plaintiff has filed evidence close pursis at Exh. 122.

29] **DEFENDANTS EVIDENCE :-**

On behalf of defendant Nos. 1 & 2, the defendant No. 1 Sarita Suryakant Mhaswade filed her evidence affidavit at Exh.

123. These defendants also relied on following documentary evidence-

Sr. No	Nature of documents	Exhibit
1	Deed of Apartment dt. 13/12/2002	95
2	Develop agreement dated 18/12/2001	126
3	Adoption deed dated 22/05/1992	127
4	Medical documents of Leela Kale	Article A
5	Letter to hospital dated 06/01/2012	128
6	Property tax bill	129
7	Passport of defendant No. 1	134
8	Bank statement of defendant No. 1	135
9	Letter of Abhinav Arogya Mahavidhyalaya Pune dated 30/04/1983	136
10	Letter of Abhinav Arogya Mahavidhyalaya Pune dated 10/11/1983	137

30] Thereafter, defendant Nos. 1 & 2 have filed evidence close pursis at Exh. 144.

31] Heard Shri. N. M. Shinde, learned advocate for plaintiff in part. During argument he filed pursis at Exh. 176 showing not faith on this Court and further declined make argument. The defendant Nos. 1 & 2 have filed written notes of argument at Exh. 167.

AS TO ISSUE NO. 1 :-

32] Admittedly, Late Ganesh Kale, husband of original plaintiff was sole owner of bungalow situated at CTS No. 1151.

Late Ganesh Kale died issueless. The defendant No. 1 is niece of Late Ganesh Kale. It is also admitted fact that, the original plaintiff had adopted Miss. Chitra daughter of defendant Nos. 1 & 2 by executing registered adopted deed which is at Exh. 127. After the adoption, name of Chitra changed to Miss. Gauri Ganesh Kale.

33] It is also not in dispute that, after adoption the defendant Nos. 1 & 2 started residing with the plaintiff in the said bungalow. It is also admitted position that, in the year 2000 the plaintiff decided develop the property through developer. Thereafter, dispute arose between the plaintiff and defendants.

34] It is the case of plaintiff that, the defendant Nos. 1 & 2 induced the original plaintiff to believe that, they are taking care of her interest and falsely represented the defendant No. 3 that, they are occupiers of the bungalow and under the said misrepresentation has obtained the execution of agreement dated 25/08/2000. This theory misrepresentation and fraud denied by the defendant Nos. 1 & 2 and submitted that, the plaintiff independently appointed developer and she has been decided consideration of development without any reference and involvement of these defendants.

35] Considering rival pleadings of both sides, the burden of proof lies on the plaintiff to prove misrepresentation. Considering averments in plaint, the plaintiff must prove that –

1. The defendants No. 1 & 2 gave representation that they will take care of plaintiff's interest in development of the property.
2. The defendants No. 1 & 2 negotiated with developer i.e. defendant No. 3.
3. The developer offered two flats and cash consideration for development. However, the defendant No. 1 & 2 misrepresented to plaintiff that developer offered only one flat admeasuring 1250 Sq.Ft. in addition to monetary consideration of Rs. 49,75,000/-.
4. The defendants No. 1 & 2 obtained signature of plaintiff on agreement dated 25/08/2000 by representing that said documents are power of attorney and consent letter to be given to the developer.
5. The defendants No. 1 & 2 misrepresented to developer that they are occupier of property and grab suit property by way of agreement dated 25/08/2000.
6. Suit property is part of consideration of development agreement.

36] It is pertinent to note that, original plaintiff died before enter into witness box. No doubt, in present suit as many as five witnesses were examined by plaintiff. However, all witnesses are hearsay witness to said transaction.

37] The legal representative of original plaintiff namely Girish Kulkarni (P.W. No. 1) filed his evidence affidavit at Exh. 74

and deposed as per the pleadings. During the cross-examination, this witness has stated that, in the year 2009 he came and reside with the original plaintiff. Prior to 2009 he did not visit house of original plaintiff. Thus, this witness has not personal information about transaction happened between plaintiff, defendant Nos. 1&2 and developer. In this line, during the cross-examination P.W.No.1 Girish Kulkarni has stated that, he has not inquired with Marathe builder why they handed over possession of flat No. 101 to the defendant No. 1. Thus, it is clear that, this witness has absolutely no personal information about the transaction nor he made any inquiry with the developer.

38] Here it is also needed to state that, the plaintiff has challenged agreement dated 25/08/2000 which is at Exh. 87. **P.W.No. 4 Sou. Manik Ajgaonkar is one of witness on said agreement and also a close friend of original plaintiff.** In her examination-in-chief affidavit she has not utter a word under what circumstances agreement dated 25/08/2000 has been signed by plaintiff. She is the best witness to throw light on the circumstances in which the plaintiff made signature on the documents. However, she remained silent about transaction in her examination-in-chief. During the cross-examination this witness specifically stated that, she has no personal knowledge whether defendant in collusion with the builder cheated to original plaintiff. Therefore, her evidence is also not helpful to prove case misrepresentation and fraud.

39] Likewise, P. W. No. 3 Vandana Jadhav and P. W. No. 5 Sudhakar Chavan have no personal knowledge about development agreement and transaction between plaintiff, defendants and developer. All these witnesses stated that original plaintiff told them and therefore they have deposed in the court.

40] P. W. No. 2 Sunil Mungale is a typist. He has stated that, he has prepared Will, supplementary Will and power of attorney of original plaintiff Leela Kale. This witness is also not on the point of misrepresentation and fraud.

41] It is pertinent to note that, Will and supplementary Will is not proved by examining attesting witness which is mandatory as per Section 68 of the Indian Evidence Act. Therefore, both documents were not exhibited. The original Will is at Article B.

42] As stated earlier, the original plaintiff died pendente lite before enter into witness-box. On perusal of will of original plaintiff, I found that, the original plaintiff made some statement about the development transaction of her property, which is relevant to the present suit. This statement suggests inference under which circumstances the original plaintiff entered into development agreement with developer. Therefore, statement in Will is relevant and amounts to an admission as per Section 17 of the Evidence Act. For ready reference, I re-write relevant portion as under-

सन २००० मध्ये वनश्री बंगला जुना झाला व दुरुस्तीचा खर्च वाढू लागला व मलाही पैशाची गरज निर्माण झाल्याने मी ते श्री. दरोडे जोग असोसिएट्स यांचे सांगण्यावरून मी श्री. मराठे असोसिएट्स ह्या डेव्हलपर्सना विकसनासाठी करार करून दिला, त्या व्यवहाराप्रमाणे १२५० चौ. फुटाचा पहिल्या मजल्यावरील एक अपार्टमेंट नं. १०३ (जमीनीमधील अविभक्त हिश्यासह) व दोन कार पार्किंग नं. ९ व १३ ही कारपार्कस मी बांधून घेतली व माझेकडे ठेवली व रोख रु. ४१,००,०००/- चा मोबदला ठरला, ही गोष्ट वंदना व संजय म्हसवडे यांना समजली व त्यांनी श्री. मुथा वकील ह्यांचे मार्फत सदर डेव्हलपर्स बरोबर वाद सुरू केला. त्यांनी अर्ध्या रकमेची मागणी केली. ज्या वंदनाचा मी सांभाळ केला, शिक्षण केले, लग्न करून दिले, जिची मुलगी मी दत्तक घेतली तिने पैशाच्या हव्यासापोटी असे भांडण केले त्याचा मला खुप मानसिक त्रास झाला, त्या दिवशी मला चक्कर आली मी बेशुध्द पडले. मात्र माझी सख्खी बहिण श्रीमती सरोज माधव भगवान त्यावेळी तिथे होती. तिनेच मला डॉक्टरांकडे नेवून अपचार करून वाचविले. सौ. वंदना व तिचे पती संजय येवढ्यावरच थांबले नाहीत तर त्यांनी वरील व्यवहारात आणखीन हाव सुटली. त्यांनी माझ्या जागेत भाडेकरू असल्याचे भासवून व कोणताही हक्क नसतांना डेव्हलपर कडून एका अपार्टमेंटची मागणी केली. त्यामुळे मला त्यांच्या दृष्ट हेतुचा संताप आला. वास्तविक मी वंदनाच्या मुलीला दत्तक घेतले ती चित्रा त्यांनीच माझ्यापासून हिरावून घेतली..... तथापी, वृद्धपकाळात मला शांतता हवी व मिळकत विकसन कामात अडथळा नको म्हणून कु. चित्राला मला मिळणाऱ्या रकमेतील काही रक्कम व वंदनाला एक अपार्टमेंट देण्याचे मी मान्य केले.....

43] Thus, on perusal of aforesaid statement of original plaintiff in Will, it is clear that, in the year 2000 the original plaintiff herself contacted with developers for development. As per development, the original plaintiff would get one apartment with

two car parking and cash consideration of Rs. 41,00,000/-. At that time, the defendant Nos. 1 & 2 started dispute with developers through Advocate Mutha. Therefore, it was decided to give one apartment to defendant No. 1 and Rs. 18,00,000/- to adopted daughter Miss. Chitra. However, in the present suit the original plaintiff stated that, the defendant misrepresented her and grab suit flat which is part and parcel of consideration of development. Thus, the averments of plaintiff itself contradictory to her statement in Will. Therefore, the theory of misrepresentation and fraud that defendant misrepresented the plaintiff about consideration of development and grabbed one flat is turn down.

44] It is also needed to state here that the plaintiff has admitted development agreement with defendant No. 3 & 4. The defendants have filed certified copy of development agreement at Exh. 126. As per development agreement, the original plaintiff got consideration as one flat No. 103 with two parking and cash amount. In this document, nowhere stated that flat No. 101 given to defendant No. 1 as a part of consideration for development.

45] The learned advocate for the plaintiff given stress on word “occupier” mention in agreement dated 25/08/2000 and submitted that the defendant No. 1 had not got any right such as tenancy / licensee/ occupier in the bungalow of original plaintiff. The defendants had misrepresented the developer and grabbed the suit property. On such ground agreement dated 25/08/2000 is void document. On the other hand, the learned advocate for

defendants submitted that defendant No. 1 resided in the said bungalow since long time and therefore she acquired right which is acknowledged by developer and plaintiff in agreement. Therefore now the plaintiff cannot denied the same.

46] Considering rival submissions, I have minutely perused agreement in question dated 25/08/2000 which is at Exh. 87. It appears that said agreement was executed between defendant No. 1 and developer i.e. defendant No. 3. The plaintiff is consenting party to this document. Executor of this document has not challenged occupier right of defendant No. 1. In fact, in the Will original plaintiff had admitted that due to dispute raised by the defendants, it was agreed to give one flat to defendant No.1. In such situation, it is irrelevant to examine whether the defendant had any right in the property.

47] Even otherwise, the plaintiff got consideration as per development agreement. The developer got right to dispose of remaining flats as per his wish. Accordingly, the developer agreed to give one flat to defendant No.1 in addition to consideration of plaintiff. Therefore, the agreement dated 25/08/2000 is valid as per contract Act.

48] It is also interesting to note that there is an agreement between defendant No. 1 and developer Marathe Builder i.e. defendant No. 4 on 18/12/2001 and same is registered before Sub-Registrar Haveli No. 2 at serial No. 14961. This original

document is at Exh. 126. It appears that the original plaintiff is consenting party to this agreement. In this agreement, the developer agreed to allot suit property to the defendant No.1 and the original plaintiff given her consent to said transaction. The defendants also relied on deed of apartment dated 13/12/2002 which is at Exh. 95. This is the title document whereby title of the suit property transferred to defendant No. 1. Original plaintiff was also party to this document. Since 2002, the defendant Nos. 1 & 2 enjoying title and possession of the suit property. Infact, suit property flat No. 101 is situated in front of flat No. 103 wherein the original plaintiff was resided till her death. Naturally, the original plaintiff had knowledge about defendants possession over the suit property since 2002. If the defendant No.1 misrepresented the original plaintiff, then why not she immediately contacted the developer and search out title of defendants. These facts shows that suit property allotted to defendant No. 1 with the consent of original plaintiff.

49] There were two unregistered and two registered documents executed in respect of suit property. The original plaintiff was party to all these four documents. However, the original plaintiff had not pleaded and challenged registered deeds. This is also one of the lacuna in this case.

50] A faint attempt made by advocate for the plaintiff and submitted that plaintiff was old lady. The defendants No. 1 & 2 had dishonest intention to grab property since inception. They

emotionally forced the original plaintiff to take their daughter in adoption and thereafter they started residing in bungalow of plaintiff. The defendants were not properly treated the original plaintiff. Miss Chitra not accepted original plaintiff as her mother and taken money under name of maintenance. Miss Chitra has not been performed any duty as adoptive daughter. Hence the defendants are not entitled to occupy suit property. The advocate for plaintiff also argued that it is last wish of original plaintiff to take suit property from defendants and therefore all these circumstances need to be taken into consideration.

51] On the other hand, the defendants also raised allegations against Mr. Girish Kulkarni (added as LR of plaintiff). According to defendants, after demise of Ganesh Kale, mother of Mr. Girish Kulkarni illegally mutated her name in said property. Therefore, dispute arose and lastly her name was removed. Thereafter he has manipulated and maneuvered the entire situation taking undue advantage of the health and feeble mind of plaintiff and grab flat No. 103 of original plaintiff. It is a plan of Mr. Girish Kulkarni to grab the property and therefore he feeds original plaintiff against them. He was prevented them to meet the original plaintiff.

52] Thus, there is allegations made by both sides against each other and played emotional card. It is duty of the court to examine evidence on record and not expected to decide issue on the basis of emotions. The burden of proof lies on plaintiff. As

discussed earlier, the theory of misrepresentation and fraud is not proved by cogent evidence. In fact, it reveals from will of original plaintiff that the developer agreed to give one flat to defendant No. 1. Hence the case of misrepresentation is ruled out. Thus, I answered to issue No.1 in negative.

AS TO ISSUE NO. 2 :-

53] The original plaintiff claim ownership of the suit property mainly on the ground that suit property was allotted to defendants as part of development consideration. This fact denied by the defendants and submitted that the defendant No. 1 became owner of the suit property by virtue of deed of apartment dated 13/12/2002.

54] Considering rival pleading, the burden of proof lies on the shoulder of the plaintiff to prove title of original plaintiff. As per findings of issue No. 1, the plaintiff miserably failed to prove that the defendant Nos. 1 & 2 misrepresented the original plaintiff about development consideration. It is clear from aforesaid discussion that the plaintiff got flat No. 103 with two car parking and Rs. 41,00,000/- as total consideration of development. Whereas, the defendant No. 1 got suit property as per deed of Apartment dated 13/12/2002.

55] It is also interesting to note that, the original plaintiff nowhere challenged deed of Apartment dated 13/12/2002 which is at Exh. 95. This is the title document whereby title of the suit

property transferred to defendant No. 1. In the absence of specific relief against this document, the present suit is not at all tenable.

56] Here, the learned advocate for plaintiff invited my attention towards letter of Sub-Registrar filed alongwith list of documents at Exh. 72 and submitted that, registration of agreement dated 25/08/2000 is stayed and therefore this document is void for want of registration. He further submitted that, agreement dated 25/08/2000 is the base document of the suit property. The base document is void-ab-initio and therefore, deed of apartment is also void document. In such scenario there is no need to challenge the subsequent document.

57] To buttress argument, place reliance of decision of Hon'ble Supreme Court in the case of **Kewal Kishan Vrs. Rajesh Kumar & ors. Civil appeal No. 6989-6992/2021** wherein it has observed that “ *A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings*”

58] The argument placed by plaintiff is not acceptable mainly on the ground that, agreement dated 25/08/2000 is not a document of conveyance. It is just a document of agreement for sale between developer and defendant No. 1 whereby the developer agreed to give one flat i.e. suit property to defendant No. 1 by recognising her right in the development property. However, the possession of suit property is not transferred at the

time of agreement. Therefore, agreement dated 25/08/2000 is not a document of conveyance as per Section 17 of the Registration Act. In such position, there is no legal requirement for registration of the agreement which is not coupled with possession. In such circumstances, non-registration of agreement is not fatal the transaction of defendant No. 1 with developer.

59] It is also needed to state here that agreement dated 25/08/2000 was executed by developer Darode - Jog & Associates. Meantime developer was changed and Marathe Builders developed the property. Again, Marathe Builder i.e. defendant No. 4 executed an agreement in favour of defendant No. 1 on 18/12/2001 which is at Exh. 126. This agreement is registered before Sub-Registrar Haveli No. 2 at serial No. 14961. It appears that the original plaintiff is consenting party to this agreement. Thus, by way of novation of contract, Exh. 126 registered agreement came into existence and acted upon by parties.

60] As per Registration Act, it is mandatory to register deed of Apartment. Exh. 95 deed of Apartment dated 13/12/20002 is duly registered before Sub-registrar office. Hence deed of Apartment is legal and valid document transferred title to defendant No 1.

61] In **Kewal Kishan** cited supra is not applicable to present case as facts are distinguishable. In citation supra there was specific pleadings in the plaint that the sale deeds were void.

However in our case there is no specific pleading in respect of deed of Apartment i.e. title document though the original plaintiff was party to that document.

62] The learned advocate for the plaintiff further submitted that the defendants concealed said document. It was brought on record during cross-examination of the plaintiff. Thereafter the plaintiff first time got knowledge about the same. The plaintiff immediately file application for amendment and the same came to be allowed by this court. However hon'ble Bombay High Court set aside amendment order. In such peculiar situation, the plaintiff not able to challenged said deed of Apartment.

63] On the other side, the learned advocate for the defendants submitted that original plaintiff was party to deed of Apartment, so original plaintiff was aware about said document since inception. They have pleaded about deed of Apartment dated 13/12/2002 in their written statement, therefore the plaintiff was aware about said document. However the plaintiff has not challenged the deed of Apartment and therefore the plaintiff admitted title of the defendants.

64] Considering rival submissions, it is pertinent to note that original plaintiff was granter No. 1 party to deed of Apartment dated 13/12/2002. The plaintiff as well as P. W. No. 4 Sou. Manik Aajgaonkar admitted signature of original plaintiff on deed of Apartment dated 13/12/2002. Thus, the original plaintiff

was party to the document and aware about this document since execution. That apart, the defendants in their written statement disclosed about deed of Apartment dated 13/12/2002. Thus, the plaintiff has knowledge about deed of Apartment dated 13/12/2002 since beginning, however, the plaintiff has not challenged the said document.

65] Deed of Apartment dated 13/12/2002 is vital document thereby ownership of the suit property from developer to defendant No. 1. Without cancellation of deed of Apartment, ownership of the suit property cannot be transferred to the plaintiff as prayed. This fact also fatal plaintiff case.

66] Here the learned advocate for the plaintiff tried to explain that vague averment was made in written statement about deed of Apartment dated 13/12/2002. No doubt, the defendants have not stated registration number of the document. The defendants specifically stated in para 21 about deed of Apartment dated 13/12/2002 as *“it is pertinent to note that the deed of Apartment dated 13/12/2002 has been personally signed and accepted by the plaintiff. The plaintiff is estopped from challenging the said documents dated 13/12/2002.”* This pleading is sufficient to understand that deed of Apartment dated 13/12/2002 was executed by plaintiff. Absence of stating registration number hardly matters when the original plaintiff herself party to the document and made her signature.

67] It is also needed to state here that the plaintiff has failed to examine developer who is best witness to disclosed what is agreed consideration for development of property. That apart, the original plaintiff had not made any grievance against the developer regarding consideration. In fact, in the Will the original plaintiff admitted that it was agreed to give apartment to the defendant No. 1.

68] Net result of aforesaid discussions, it is clear that the plaintiff miserably failed to prove that suit property was part of development consideration to be given to the original plaintiff. Even otherwise, the plaintiff has not challenged deed of Apartment dated 13/12/2002. Therefore ownership of defendant No. 1 is not challenged under the present suit. Hence the original plaintiff cannot get title of the suit property. As a result, I answered to issue No. 2 in negative.

AS TO ISSUE NO. 4 :-

69] It is the case of plaintiff that original plaintiff Leela Kale executed supplementary Will bequeathing suit property to him. A will and supplementary Will denied by the defendants. Hence burden of proof lies on the shoulder of the plaintiff to prove will and supplementary Will as per section 68 of the Evidence Act.

70] Insistingly, the plaintiff failed to examine attesting witnesses on the Will and supplementary Will. Therefore, these documents are exhibited during trial.

71] The advocate for the plaintiff invited my attention towards written statement of defendants and submitted that the defendants have not specifically denied signature of original plaintiff on Will and supplementary Will. Therefore these documents deems to be admitted documents in evidence. On the other hand, defendants submitted that they have denied documents. The plaintiff failed to prove will as per section 68 of Evidence Act by examining attesting witnesses. Therefore Will and supplementary Will are not proved as per law.

72] Considering rival contentions, I have minutely perused pleading to both side in respect of will and supplementary will. The defendants in their written statement specifically stated that *“These defendants have not accepted execution of alleged Will and stated that, the plaintiff was not in mental and physical condition at the relevant time. The alleged Will is creation of power of attorney holder Girish Kulkarni. It is a plan of the power of attorney holder to grab the property and therefore, supplementary Will is also a intrigue for the same purpose”*. Thus, the defendants specifically denied free consent and mental condition of the original plaintiff while executing Will and supplementary Will. In fact the defendants have challenged legality of Will and supplementary Will mainly on the ground of mental condition of original plaintiff. In this backdrop, it is the duty of the plaintiff to prove Will and supplementary Will by examining attesting witnesses. However the plaintiff has failed to

examine the same. In such circumstances both documents not prove as per section 68 of Evidence Act.

73] Even otherwise, assuming that Will and supplementary Will proved by plaintiff. Only owner of property has power to bequeath property through will. A Will can only distribute assets that the individual legally owns. If the person doesn't have the legal title to the property, he can not bequeath it in Will because it is not legally his property. As per findings of issue No. 2, the plaintiff miserably failed to prove that suit property is part of development consideration and original plaintiff had got ownership. In the absence of title, the original plaintiff had no right to bequeath suit property. Hence supplementary will is not legal and title of suit property cannot pass to the plaintiff. As a result, I answer to this issue in negative.

AS TO ISSUE NO. 5 :-

74] It is the specific defence of defendants that suit is barred by limitation. According to defendants, the suit is filed for declaration that agreement dated 25/08/2000 is illegal and not binding on the plaintiff and consequential reliefs. Therefore suit must be filed within three years from the date of execution of document.

75] On the other hand, the plaintiff pleaded that in somewhere December 2009 developer handed over documents to plaintiff and therefore the plaintiff first time got knowledge about

agreement dated 25/08/2000. Hence limitation start from knowledge i.e. from December 2009.

76] This is a declaratory suit that document is void ab-initio, illegal and not binding on plaintiff, cancellation and for possession. Article 56 of Limitation Act applied in present suit. The period of limitation for suit to declare the forgery of an instrument issued or registered is three years when the issue or registration becomes known to the plaintiff.

77] Here, the plaintiff has made signature on agreement dated 25/08/2000. The case of misrepresentation is not proved. Even otherwise, the original plaintiff was aware about allotment of suit property to defendants since beginning and the same is reflected from her Will. That apart, the original plaintiff was signatory party to agreement dated 25/08/2000, agreement dated 28/11/2000, registered agreement dated 18/12/2000 and registered deed of Apartment dated 13/12/2002. Thus, the original plaintiff known about documents since execution in 2000 to 2002. However the plaintiff has filed suit in 2011 i.e. beyond period of limitation. As a result, I answered to this issue in negative.

AS TO ISSUE NO. 3, 6 & 7 :-

78] In view of findings of issue No. 1 and 2, the plaintiff is miserably failed to prove theory of misrepresent and ownership over the suit property. That apart, present suit is barred by law of

limitation. Hence the plaintiff is not entitled to relief of declaration, possession and injunction as prayed.

79] Here, the defendants raised objection that the plaintiff is not legal representative, therefore suit is liable to be abated on this sole ground. On the other hand, the advocate for the plaintiff submitted that the defendants have never raised objection to his application for implead legal representative below Exh. 24. Therefore, defendants have no right to raise any objection.

80] It is admitted position that original plaintiff adopted daughter namely Chinta @ Gauri. The plaintiff is son of sister of original plaintiff i.e. nephew from mother side. The plaintiff claims as legal representative based on Will and supplementary Will of original plaintiff. The defendants have not raised any objection while deciding application below Exh. 24. It also reveals that, order below Exh. 24 is *“Allowed as application is within limitation”*. At the time of deciding Exh. 24, this court did not go into legality of Will and supplementary Will. It does not mean that the plaintiff's right acknowledged by the court. It is the duty of the plaintiff to prove Will and supplementary Will during evidence. But he fails to do so. Hence the plaintiff miserably failed to prove that he is legal representative of deceased original plaintiff Leela Kale. On this ground also suit deserves to be dismissed.

81] Here the plaintiff relied on decision in **Shiv Ram Vs. Smt. Pinki and ors.** (copy downloaded from indiankanoon website

which is not authorized reporter) wherein Hon'ble Allahabad high Court observed principle of "*justice hurried is justice buried*".

82] In this case, issues were framed on 09/01/2015. Since then matter posted for evidence of plaintiff. The plaintiff examined as many as five witnesses and finally closed evidence by filing pursis on 05/08/2024. Meaning thereby, plaintiff has exhaust almost 8 years and 7 months which is more than sufficient to complete evidence in all aspect. Suit is pending since 2011. Infact, there is no hurried but delayed the suit for one and the other reasons. Hence above principle is not applicable in our case.

83] As a result, the plaintiff is not entitled to get any relief from this court. Hence I answered to issues No. 3, 6 and 7 in negative.

AS TO ISSUE NO. 8:-

84] Net result of aforesaid discussions, the suit is liable to dismissed with costs.

85] Before going to pass final order, it is necessary to highlight some events that present case is time bound by an order of Hon'ble Bombay High court as stated supra. On 07/10/2024 matter posted for final argument. Thereafter plaintiff filed application for framing additional issues which came to be rejected by this court. Thereafter plaintiff preferred writ petition before Hon'ble Bombay High Court and the same was dismissed.

Thereafter plaintiff moved application for re-open plaintiff evidence, issue witness summons, exhibit document etc. All these applications came to be rejected by this court. Thereafter plaintiff again moved to Hon'ble Bombay High Court and preferred writ petition and same is pending. More than one month time permitted but plaintiff failed to take positive order from higher court. The defendants filed written notes of argument. When I declined further adjournment, the defendant No. 3 appeared through advocate and several applications which were decided by this court. Again advocate for plaintiff sough time and assured that he will file written notes of argument on 10/01/2025. Accordingly, matter adjourned till 10/01/2025.

86] On 10/01/2025, advocate for plaintiff initially submitted that he will start oral argument on 12.30 p.m., therefore I have discharged my board. However the advocate for plaintiff absent in morning session. He came on 04.00 p.m. and started argument till end of day. Again matter kept for remaining argument on 13/01/2025. On 13/01/2025, advocate for plaintiff started argument at 01.30 p.m. till 02.00 p.m. Said argument nothing but repeated as he argued on 10/01/2025. In this backdrop, I requested to complete his argument within 30 minutes in afternoon session as he already consumed sufficient time of this court. Thereafter in afternoon session advocate for plaintiff filed one pursis and stated that this court already predetermined against plaintiff, therefore his client has no faith on the court. Thereafter he refused to complete argument. Pertinent to note that

advocate for plaintiff not made his signature on pursis and blame on court by taking shelter of his layman client.

87] As per Order 18 Rule 2 sub-clause 3-A to 3-D, the court has power to fix time limits for oral argument. Already advocate for plaintiff consumed two hours and repeatedly argued the same again and again. In such situation this court has power to curtail argument by fix time limit as matter is time bound and this court is obeying direction of hon'ble Bombay High Court. Infact I have not permitted more than 10 minutes time to advocate for defendants for reply as he filed written notes of argument. As discussed earlier, absolutely no evidence on record to prove theory of misrepresentation. Therefore advocate for plaintiff tried to prolong the matter by filing several applications and preferred writ petition to drag the matter. Filing such kind of pursis and blame on me is nothing but an attempt made that I will refuse to decide the case and request hon'ble P.D.J. to transfer the case to another court, so again plaintiff would get chance to delay the matter. I am of firm opinion that such kind of attempt is made to deceive the court and interfere with the administration of justice. If you have no case, then blame on judge is the tendency of advocate of this plaintiff. However, I am duty bound to decide the case as Hon'ble Bombay High Court directed to decide the matter within time limit on or before 18/01/2025. I am also of firm opinion that I am impartial and decide the case on merit within time period. Hence, I proceed to deliver judgment.

88] Here, I express my gratitude to Shri. S. P. Deo, learned advocate for defendant Nos. 1 and 2 for conducting the matter on each date without sought a single adjournment, so that I can decide the matter within timeline.

89] As a result, I pass following order :-

ORDER

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

Date : 15/01/2025.

(P. G. Tapadiya)
5th Addl. Judge Small Causes Court &
Jt. Civil Judge S.D., Pune.

: CERTIFICATE :

“I affirm that the contents of this P. D. F. File are same word for word as per original order/ judgment.”

Name of the Stenographer : B. M. Salve (Stenographer Grade - II)

Name of the Court : Shri. P. G. Tapadiya
5th Addl. Small Causes Court &
Jt. C.J.S.D., Pune.

Dictated on : 15/01/2025

Transcribed on : 15/01/2025

Judgment checked & signed
by Presiding Officer on : 15/01/2025

Judgment uploaded on : 15/01/2025