

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14096 OF 2023
WITH
INTERIM APPLICATION NO. 17169 OF 2023
IN
WRIT PETITION NO. 14096 OF 2023

Kedarnath Kisanlal Sall ...Petitioner

Versus

Kisanlal Amarnath Sall And Anr ...Respondents

Mr. Vachan Bodke i/b V & M Legal, for the Petitioner.
Ms. Chand Deepti, appointed for Respondent No. 1.
Ms. Vrushali Raje, for the Respondent No. 3 and 4.
Ms. M. S. Bane, AGP for the State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : March 16, 2026

P. C. :

1. This Court had interacted with Respondent No. 1 in chamber. The Respondent No. 1 is aged about 80 years and is educated upto 4th standard. During the interaction, this Court found that he is unable to comprehend correctly the questions put to him. All that he kept on reiterating was that the Petitioner herein, who is his younger son has duped him and is usurping his property. His continuous request was that his property should be returned to him and that his younger son had taken his signatures on some documents and is now claiming the property. Upon query by this Court as to whether he had given any instructions to the appointed advocate that gift deed was executed

with his knowledge, understanding and consent, he was unable to respond and only repeated that his younger son had duped him and taken away his property.

2. The interaction with the Respondent No. 1 personally was necessitated as during the earlier hearing, an Affidavit of consent was sought to be tendered on behalf of the Respondent No 1 stating that the gift deed in favour of the Petitioner was with Respondent No 1's consent and knowledge and the dispute is now settled between the Petitioner and Respondent No 1. This affidavit was sought to be disputed by Learned counsel for the Respondent No. 3 and 4, who is the elder son of Respondent No 1.

3. When the matter was called out in morning session, the appointed Advocate was not present. The matter was kept back and the learned counsel for Petitioner who had her contact number was asked to contact her and inform her about the matter being kept back. On second call, learned appointed Advocate appeared for Respondent No 1.

4. Upon perusal of the affidavit which was tendered to this Court on 22nd April, 2024, it was noticed that the affidavit is stated to be signed by Respondent No. 1 and above his signature it has been noted by appointed advocate that the contents have been explained to him in hindi. It is expected that when the deponent of affidavit of this nature

is not conversant with English language, the deponent would be taken to the interpretation department of this Court and the contents be explained to him properly. If this elementary precaution would have been taken, today's position would not have arisen. Further the affidavit is not affirmed before the affirming authority of this Court and instead has been notarized by notary whose address is of Bandra (West). It is difficult to understand that if the appointed advocate is having her chamber in vicinity of this Court, the affidavit was prepared on the same day on which the hearing had taken place and the Respondent No 1 was present, why was the affidavit notarized by a notary in Bandra.

5. The explanation given by Learned Appointed Advocate was that the department working hours were over and hence the affidavit had to be notarised and that it was the Petitioner who had taken the Respondent No 1 to Bandra for notarisation. The Petitioner himself is the contesting party and the Affidavit was not notarised in presence of the Learned Appointed Advocate. The Learned Appointed advocate is unaware as to whether the Respondent No. 1 had in fact been to the notary's office. According to her, in the peculiar facts of the case as she had already explained the contents of the affidavit to the Respondent No. 1 she had left it to the Petitioner to complete the formalities as regards the notarization. Learned Appointed Advocate would further

submit that the Respondent No 1 is now changing stands.

6. I do not wish to delve further into the matter, however, the only anxiety of this Court is that no disservice should be done to a litigant who has reposed faith in the Advocate appointed by the Court to espouse his cause. I have personally interacted with Respondent No. 1 and considering his age and strata of society from which he comes, the elementary precaution of getting the document interpreted and signed before affirmation department of this Court should have been taken.

7. As the Respondent No. 1 has made it clear during the interaction in the chamber that he had not gifted the property and that he wants his property back, this Court is not inclined to accept the affidavit of Respondent No. 1 that the gift deed was executed with his knowledge, understanding and consent as stated in the affidavit.

8. The Legal Services Authority is directed to substitute the present Appointed Advocate with other panel Advocate to espouse the cause of Respondent No. 1. As there is no consent, the Petition will have to be heard on merits. Legal Services Authority to appoint an advocate from the legal aid panel to represent Respondent No. 1 on or before 25th March, 2026. Stand over to **30th March, 2026.**

[SHARMILA U. DESHMUKH, J.]