

(1994) 10 BOM CK 0051
In the Bombay High Court
Case No : Second Appeal No. 1 of 1985

Vasant Rajaram Narvekar, since deceased by his legal heirs	APPELLANT
Vs	
Ankusha Rajaram Narvekar and Others	RESPONDENT

Date of Decision : 24-10-1994

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 2
Contract Act, 1872 — Section 18, 19
Evidence Act, 1872 — Section 102, 114, 3, 61
Transfer of Property Act, 1882 — Section 123, 6

Citation : (1995) 3 BomCR 196

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Advocate : M.A. Rane and Madhav Jamdar, for the Appellant; Narendra V. Walawalkar and P.L. Naik, for the Respondent

Final Decision : Allowed

Judgement

S.D. Pandit, J.—Shri Vasant Rajaram Narvekar, the original plaintiff in Regular Civil Suit No. 71 of 1975 on the file of Civil Judge Junior Division. Malvan. District - Sindhudurga has preferred this Second Appeal against the judgment and decree passed by the Assistant Judge, Ratnagiri in Civil Appeal No. 113 of 1978 on 17th April. 1984.

2. The facts giving rise to the present appeal are as under :

The present appellant Shri Vasant Rajaram Narvekar is son of Shri Rajaram Laxman Narvekar. Smt. Bhagirathi is the wife of the said Rajaram Laxman Narvekar. Defendant No. 1 Ankush, defendant No. 9 Yashwant and defendant No. 10 Prabhakar are brothers of the appellant Vasant Rajaram-Narvekar and they are sons of Rajaram and Bhagirathi Rajaram Narvekar. These four brothers have got 2 sisters by name Asha and Gulab. Asha was married to Sitaram Phansekar. She lost her husband in the year 1950 and then she returned to her parental house and she entered the witness box as P.W. 1 as the plaintiff's witness No. I

to support the claim of the original plaintiff-appellant Vasant Rajaram Narvekar.

3. The property in dispute is a land and a house building standing thereon situated within the Municipal limits of Malvan. The said property is bearing Municipal House No. 2794. The appellant-original plaintiff has come before the Court with a case that the suit property is donated. Defendant No. 2 is wife of the defendant No. 1 Ankush. It is the claim of the plaintiff that defendant Nos. 1 to 8 are wrongfully in occupation and possession of the portion of the said house property. Though he had asked them to vacate the said property, they are not ready and willing to vacate the same. He, therefore, brought the present suit to get declaration that he is the owner of the suit property and to get a decree of possession against defendant Nos. 1 to 8 and to get a decree of perpetual injunction restraining them from disturbing his possession Vahiwat of whole of the suit property.

4. Defendant No. 1 has contested the claim of the plaintiff by filing his written statement at Exhibit 21. He has contended that the land in question was purchased by his father Rajaram Laxman Narvekar in the name of his mother Bhagirathi as Benamidar. Shri Balkrishna Laxman Narvekar is the brother of the plaintiff's father Rajaram Laxman Narvekar. As Balkrishna Laxman Narvekar has incurred heavy debts and there were money decree against the said Balkrishna, the ancestral house was already attached and brought to sell in executing the money decree. He further contended that the land on which house building in question is raised was purchased by his father in the name of his mother. Mother was Benamidar for land and house was built by his father. Thus, he has contended that his father was the real owner of the suit property in question. Consequently, his mother Bhagirathi had no right to gift away the said property in favour of the appellant-original plaintiff. He has further contended that his mother Bhagirathi was ill. She was not also quiet conscious and the Gift Deed in question is obtained by the plaintiff Vasant Rajaram Narvekar by playing fraud on his mother and by mis-representing her. Thus, he has contended that the plaintiff has exclusively no right title or interest as claimed by him. Therefore, in the circumstances, the plaintiff is not entitled to get a decree sought for, and therefore, the suit of the plaintiff be dismissed with costs. Defendant Nos. 2 to 8 have adopted his contentions by filing purshis at Exhibit 22. Defendant No. 9 though duly served remained absent. Whereas defendant No. 10 by filing written statement at Exhibit 17 admitted the suit claim and consented to pass a decree in favour of the plaintiff as claimed by him.

5. In view of the rival pleadings of parties, the trial Court has settled as many as 8 issues at Exhibit 26 and recorded the evidence for both sides. The trial Court held that there was a valid Gift Deed in favour of the plaintiff. The trial Court has also held that the plaintiff's donor Bhagirathi was exclusive owner of the property in question. He, therefore, came to the conclusion that the plaintiff was entitled to get a decree sought for. He, accordingly, decreed the plaintiff's suit by his order dated 3rd October, 1978.

6. Being felt aggrieved by the aforesaid decision, original defendant No. 1 Ankush Rajaram Narvekar had preferred Civil Appeal No. 113 of 1978 in the Court of Assistant Judge, Ratnagiri. The said appeal was heard by Assistant Judge, Ratnagiri and by his judgment and decree dated 17th April, 1984, he reversed the decree of the trial Court by holding that the property is purchased in the name of Bhagirathi-was of Rajaram Laxman Narvekar and Bhagirathi was only Benamidar. He has also come to the conclusion that the house property was standing in the name of Rajaram Narvekar. Rajaram Narvekar is the owner of the said house property. The Appellate Court further came to the conclusion that the Gift Deed in favour of the appellant/original plaintiff was not legal and valid. Therefore, in the circumstances, the First Appellate Court has come to the conclusion that the plaintiff was not at all to get any decree sought for. He, therefore, allowed the appeal and set aside the judgment and decree passed by the trial Court and dismissed the plaintiff's suit-by directing the parties to bear their respective costs.

7. Being felt aggrieved by the said decision, the original plaintiff Vasant has come in Second Appeal before this Court. The suit property consists of the land and house standing therein situated within the Municipal limits of Malvan. It is an admitted fact that .the land in dispute is purchased by registered Sale Deed in the name of Bhagirathi in the year 1921 by purchased Deed dated 15th January, 1921 .It is also an admitted fact that when the said land was purchased, it was open land and there was no building standing on the same. The house building in dispute is subsequently raised in the said land. There is a dispute between parties as to whether the suit house was built by Bhagirathi or her husband.

8. As regards the land purchased by the Sale Deed dated 15th January, 1921, the trial Court had held that it was purchased by Bhagirathi whereas the First Appellate Court had held that it was purchased by her husband Rajaram Narvekar in her name as his Benamidar. Therefore, the First Appellate Court has held that the appellant's mother Bhagirathi was not the real owner of the said land and that the real owner of the said house property was her husband Rajaram Laxman Narvekar. But in view of the provisions of Benami Transactions (Prohibition) Act, 1988, it is not open to hold that the real transaction was a benami transaction and that the Benamidar was not the real owner of the house property and her husband Rajaram Laxman Narvekar was the real owner. No doubt, the said Act has come into force during the pendency of this proceedings and after the decision of the trial Court. But the Supreme Court has held in the case of Mithilesh Kumar and Another Vs. Prem Behari Khare, as under :-

"The Benami Transaction (Prohibition) Act contains no specific provision making its operation retrospective. The Act is a piece of prohibitory legislation and it prohibits benami transactions subject to stated exceptions and makes such transactions punishable and also prohibits the right to defences against recovery of benami transactions as defined in section 2(a) of the Act. The Parliament has jurisdiction to pass a declaratory legislation. As a result of the provisions of the

Act all properties held benami at the moment of the Act coming into force may be affected irrespective of their beginning, duration and origin. This will be so even if the legislation is not retrospective but only retroactive. The Act contains no specific provision making its operation retrospective."

Therefore, in view of the decision of the Apex Court, it is not now open to hold that the Sale Deed in favour of Bhagirathi was a benami transaction and that the Bhagirathi was not the real owner. The First Appellate Court has recorded the finding that the house property in dispute is built by Rajaram Laxman Narvekar. The said finding has been recorded by the First Appellate Court after considering the material on record. Therefore, it is urged before me by the learned Advocate Shri Walawalkar for the respondents that the finding recorded by the First Appellate Court is a finding of fact and that the same should not be interfered with by this Court in Second Appeal. In support of that submission of the learned Advocate for the respondents, he has cited before me two cases; (1) reported in 1922 Indian Appeals, 51 and (2) reported in Karbalai Begum Vs. Mohd. Sayeed and Another, . In the case of 1922 Ind App 51 , the findings of facts were concurrent findings of the trial Court as well as First Appellate Court, and therefore, it has been held that the same need not be interfered with the same. In the instant case, admittedly there is no concurrent finding of fact. The trial Court has held that" defendant No. I had failed to prove that the house property in question was built by Rajaram Laxman Narvekar whereas the First Appellate Court had found that the original plaintiff appellant had failed to show that the house was built by Bhagirathi and also came to the conclusion that there was material on record to infer that Rajaram Laxman Narvekar must have built the said house property. Thus, in the case before me, there is no concurrent finding of fact. But in the case of Dilbagrai Punjabi Vs. Sharad Chandra, the Head Note is running as under :

"For the landlord claiming eviction of his tenant from a non-residential premises on ground that he requires the premises personally for starting a business it is essential to establish that he is the owner of the disputed premises. Where in such a suit the lower courts had without considering the tenant's admission of the landlord's title to disputed property as contained in his reply to the notice given by the landlord and in the numerous rent receipts issued by the landlord, recorded the finding that the landlord had failed to establish his ownership to the disputed property, the High Court was right in reversing the finding of fact. The Court is under a duty to examine the entire relevant evidence on record and if having direct bearing on the disputed issue and the error which arises is of a magnitude that it given birth to a substantial question of law, the High Court is fully authorised to set aside the finding. Such was the situation in the case."

Thus in the latter case, the Supreme Court has observed that if the lower courts have without considering the material evidence on record property and have recorded an erroneous finding then the High Court was quiet right in reversing the finding of fact recorded by the courts below. Therefore, having bearing the

ratios laid down by the Supreme Court in the case of Karbalai Begum Vs. Mohd. Sayeed and Another, as well as in the case of Dilbagrai Punjabi Vs. Sharad Chandra, , I am proceeding to consider the material on record to find out as to whether the findings of the First Appellate Court regarding the building in question and the Gift Deed in favour of the appellant-original plaintiff are erroneous and whether interference with the same to justify in the circumstances of the case.

9. The land on which the house property is standing, admittedly was purchased by the Sale Deed dated 15th January, 1921 in the name of Bhagirathi and the house property subsequently raised on the said land which is purchased by the Sale Deed standing in the name of Bhagirathi. Therefore, the natural presumption would be that the house property must have been raised by the person in whose name the land below the house is standing. Therefore, in the circumstances, the trial Court was justified in putting the burden on the original defendant No. 1 to show that the building in question was raised by Rajaram Laxman Narvekar. That putting of the burden on defendant No. 1 was not only properly appreciated by the First Appellate Court but the First Appellate Court had observed that the act of the trial Court in putting of the burden on defendant No. 1 was erroneous and incorrect. That observation in the First Appellate Court itself clearly shows that the approach of the First Appellate Court in the matter was not correct. When admittedly the land is standing in the name of Bhagirathi and the house property is standing on that land then the burden would be on the person who is contending that the house is built by somebody else than the Bhagirathi to show the same.

10. The said house is built after 1921 and some time prior to 1936. I am saying that the said house is built sometime before 1936 because there is one Mortgage Deed dated 25th March, 1936 executed by Bhagirathi in favour of one Govind Narayan Gogte. The said document is produced at Exhibit 60. The original plaintiff Vasant Rajaram Narvekar as well as contesting defendant Ankush Rajaram Narvekar, both were admittedly minors when the construction in question took place. Therefore, in the circumstances, neither of them could have any personal knowledge of the said construction. The Mortgage Deed of Exhibit 60 is not considered by the said document is in modiscript and the translation of the said document was not produced in Marathi language or English language either in the trial Court or First Appellate Court. The said translation is made available at the time of the hearing of this appeal. If the said document is considered then it would be quiet dear that the said document is of great importance in considering the controversy between parties. I am unable to understand as to how the First Appellate Court has come to the conclusion that the said document of Exhibit 60 has come into existence after the death of Rajaram Laxman Narvekar. There is no death extract or any other document to show what is the exact date of the death of Rajaram Laxman Narvekar. The First Appellate Court has not also stated in his reasoning as on what basis he was holding the said document of Exhibit 60 has taken place after the death of

Rajaram Narvekar. No doubt in the cross-examination of the appellant-original plaintiff's witness Asha, it has come in para 10 of her evidence that her father has died in the suit house in 1936. The said Asha is real sister of both the appellant-original plaintiff as well as .contesting defendant Ankush Rajaram Narvekar. Even if the said statement of Asha in para 10 of her cross-examination is taken into consideration, it could not be said that the said statement is showing that the death of Rajaram Laxman Narvekar has taken place prior to 25th March, 1936. On the contrary, the document itself shows that the death of Rajaram Laxman Narvekar must have taken place after the said document. Because the said document at Exhibit 60 shows that Rajaram Laxman Narvekar is one of the attesting witness to the said registered Mortgage Deed dated 25th March, 1936. It is also to be mentioned here that Bhagirathi has also not described in the said document as Exhibit 60 as a widow of Rajaram Laxman Narvekar. If contents of the said document of Exhibit 60 are read then it would be quiet clear that at the time of execution of the said document, her husband Rajaram Laxman Narvekar was alive. Because in the document itself, it has been clearly mentioned that her husband Rajaram Narvekar is ill and because of his illness, she had incurred debt from others to a great extent, and therefore, in order to satisfy the said debts and for maintenance of the family, she was raising the said loan. In the said document she has described the house property as well as the house as of her ownership she had mortgaged the said house property as well as land to Govind Narayan Gogte and that the document is signed as an attesting witness by Rajaram Laxman Narvekar. The conduct of Rajaram Narvekar in signing the said mortgage deed, as an attesting witness in which she has described the property as of her ownership, goes to a great extent in not accepting the contention of the contesting defendant that house was of his father's ownership. The document of Exhibit 60 shows that the mortgagee was an Advocate and when the mortgagee was an Advocate he would not have accepted the mortgage only from Bhagirathi if Bhagirathi was not the owner of the house property in question. No doubt, this document at Exhibit 60 itself is not a direct document of title of Bhagirathi but it is the document which is proving the conduct of Bhagirathi as well as Rajaram Narvekar and the said document is an old document, and therefore, it is of much importance. The First Appellate Court has not at all looked into the said document by holding that the said document has taken place after the death of Rajaram and consequently, he has committed an error which has resulted into the miscarriage of justice. The said document also shows that by the said transaction, she had also got satisfied a bond executed by Rajaram Laxman Narvekar in favour of the Mortgagee Govind Narayan Gogte.

11. The First Appellate Court has also observed that it has come in evidence of Rajaram that he was working in Port Trust and he was drawing the salary of Rs. 125/- to 150/-, and therefore, he had capacity to spend for construction of the house building in question. .But here also the First Appellate Court has not properly considered the evidence on record. The land in question was purchased

in the year 1921. At the time of the" said purchase of the land, Bhagirathi was aged about 21 years. No doubt, her husband Rajaram Laxman Narvekar must be elder than her. Therefore, his age might be about 25 to 26 years in the year 1921. If the evidence of the appellant/ plaintiff's witness Asha, who is sister of both appellant Vasant as well as defendant Ankush, is taken into consideration then it may be quite clear that Rajaram was not earning anything and all children of Bhagirathi and Rajaram were born subsequent to the year 1921. That circumstance also shows that Rajaram must be roundabout 25 to 26 years old in 1921. The defendant has examined one witness Shankar Dhondu Bagade as D.W. 2 at Exhibit 104. This witness has deposed in his examination-in-chief that Rajaram was serving in Port Trust and he used to get Rs. 150/- by way of salary. But the same witness has deposed in his cross-examination as under:

"Rajaram was serving in Bombay till 1920. It is my case that Rajaram was getting Rs. 150/- p.m. by way of salary. Narayan used to tell me that he was in Port Trust."

If the above evidence of the same witness in his cross-examination is taken into consideration then it would be quiet clear that at the time of purchase of the land in 1921, Rajaram had no job. As stated earlier, in 1921, Rajaram must be around about 25 to 26 years old, and therefore, he must not have retired from his service but he must have lost his job on account of some happening wrong with him or must have resigned his job. If his age is taken into consideration at that time, there is no likelihood of his bringing some big amount from his job. Asha has clearly stated that her father was not earning single money and her father had no money at any time. It has come in the evidence of Asha that her mother was working in Cashew factory and she was getting 10 to 12 annass per day. Therefore, her monthly earnings were about Rs. 20 to 25 per month in the year 1921-22. It is also claim of the appellant-original plaintiff that Bhagirathi's sister Yashoda had given financial help to his mother in purchasing the land as well as in raising the house on the said land in question. It has come in evidence that after purchasing the land in 1921, 2 years thereafter they have raised the building therein. Then it is not the claim of the respondent-original defendant either in his examination-in-chief or in cross-examination of Asha that her father was having some business or any particular source of income then it becomes very difficult to hold that the house must be raised and constructed by Rajaram Laxman Narvekar. No doubt, it has come in the evidence of Asha, in the evidence of contesting defendant Ankush Narvekar as well as his witness Shankar Dhondu Bagade that after raising of the building in question, Rajaram Laxman Narvekar was running a hotel in the same .building and that the hotel was also being run by Bhagirathi. But the running of a hotel has taken place after the construction of the building in question. It is very pertinent to note that there is no claim that Rajaram was having hotel business at some other place than the building in question before its construction. In view of the above circumstances, the finding recorded by the First Appellate Court is erroneous and is not at all warranted by any material on record.

12. I have already considered the Mortgage Deed of Exhibit 60 and I have observed that the conduct of Rajaram Laxman Narvekar in signing the mortgage deed as one of the attesting witness in which Bhagirathi has described the house property as of her ownership makes the claim of respondent/original defendant Ankush Rajaram Narvekar that his father was the owner of the building in question unbelievable and unacceptable. His conduct of signing the said mortgage deed as an attesting witness could be also taken into consideration even assuming that what Ankush Rajaram Narvekar is contending was true and correct as conduct of making Bhagirathi as Benamidar owner and the said house property for him. Because by signing the said mortgage deed as an attesting witness, he had posed before the mortgagee that the real owner of the house property is the said Bhagirathi. Thus, by attesting the said mortgage deed, she had made Bhagirathi as Benamidar of the said house property. Even if it is accepted in favour of the contesting defendant Ankush that Rajaram was real owner of the said house property. Therefore, signing of the said document of Exhibit 60 by Rajaram Laxman Narvekar could be taken into consideration in this light also. Then on account of provisions of Benami Transactions (Prohibitions) Act, 1988, Bhagirathi would also become the absolute owner of the said property i.e. house building property and it is not open for respondent/original defendant to raise a contention that his father was the real owner of the property in question.

13. The learned Advocate Shri Walawalkar for the respondent-defendant urged before me that the appellant had not entered into the witness box and his failure to enter the witness box should be taken into consideration and an adverse inference should be drawn against the appellant Vasant Rajaram Narvekar. He has contended before me that the case is completely covered by section 114(g) of the Evidence Act. I have already stated earlier that both the appellant as well as contesting defendant Ankush Narvekar have born 5 years after the purchase of the land in question and they are born after raising of the building in question. I have already referred to the Mortgage Deed Exhibit 60 which took place on 25th March, 1936. At the time of the said mortgage deed, the appellant Vasant Narvekar was hardly 10 years old and therefore, in the circumstances, it could not be said that the appellant Vasant was knowing certain material facts for deciding the controversy between parties and he avoided-the cross-examination in order not to disclose the fact within his knowledge. An adverse inference could be drawn against parties u/s 114(g) of the Evidence Act only in case if party purposefully withholds himself. In the case of Pandurang Jivaji Apte Vs. Ramchandra Gangadhar Ashtekar (Dead) by Lrs. and Others, , it has been clearly held that when the material on record on the point in issue is clear, no presumption could be raised against the person who failed to appear in the Court. In the case of The Eastern Bank Ltd. Vs. Parts Services of India Ltd. and Others, , the following principles are laid down regarding the application of the provisions of section 114(g) of the Evidence Act.

"The common principle of law is that if by cross-examination the opposing party

can discredit the plaintiff's witness to show that there is no case to answer then in that case whether he himself deposes or not is not a ground on which the plaintiff can question the conduct of the defendant to establish his own case."

Therefore, in view of the circumstances, it is not possible to hold that the appellant Vasant Narvekar has purposely avoiding the cross-examination. The appellant Vasant had no personal knowledge about the construction in question, and therefore, his entering the witness box is not so material.

14. Therefore, in view of the above discussion, I hold that the First Appellate Court has committed an error to such an extent by not properly considering the material on record that it has resulted into miscarriage of justice, and therefore, the interference in the said finding of the First Appellate Court regarding ownership of the building in question is justified as laid down by the Supreme Court in the case of *Dilbagrai Punjabi Vs. Sharad Chandra*, .

15. The learned Advocate Shri Walawalkar for the respondent argued before me that if the provisions of sub-section (2) of the section 3 of the Benami Transaction (Prohibition) Act, 1988 are taken into consideration then the said Act will not be applicable in order to appreciate his contention, it is necessary to quote here sub-sections (1) and (2) of section 3 of the Benami Transaction (Prohibition) Act, 1988. They are running as under :

"Prohibition of Benami transaction :-

(1) No person shall enter into any Benami transaction.

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter."

It the above provisions are taken into consideration then it will be quiet clear that under sub-section (1) of section 3, it has been clearly laid down that after enforcement of the said Act, no person shall enter into any Benami transaction and sub-section (2) gives an exemption from the provisions of sub-section (1) by laying down that in case of purchase of the property by any person in the name of wife or unmarried daughter. The provisions of sub-section (1) will not be made applicable. It also further lays down that it shall be also presumed that the said purchase was made for the benefit of the wife or unmarried daughter as the case may be. This provisions of sub-section (1) and (2) of the section 3 of the said Act are to be read with then sub-sections (3) and (4) of section 3 of the said Act which are as under :

"(3) Whoever enters into any Benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure. 1973,

an offence under this section shall be non-cognizable and bailable."

Therefore, from sub-section (3), it is obvious that the Criminal action could be taken against the person who entered into benami transaction after the said Act of 1988 comes into force. Therefore, the provisions of the said sub-section (3) will not prevent the implication of sub-section (4) of section 3 of the Benami Transactions (Prohibition) Act, 1988. Therefore, in the circumstances, the submissions made by the learned Advocate Shri Walawalkar for the respondents-original defendants that the transaction in question is saved by sub-section (2) of section 3 of the said. Act, 1988 is not correct.

16. The trial Court has raised the point No. 4 for his consideration and has recorded his finding on the same as under :-

Point No. 4

Whether defendant No. I proves that plaintiff obtained the gift deed dated 29th May, 1973 from Bhagirathi with fraud and undue influence and therefore it is not binding upon him?

Finding:

No.

17. Therefore, it is quiet obvious that the trial Court had not accepted the contention of the original defendant No. I before me that the gift deed in question was obtained by the appellant-original plaintiff by playing fraud. The Gift Deed in question is registered document. If section 123 of the Transfer of Property Act is considered, then it would be quiet clear that in case a gift of Immovable property, the transfer must be effected by registered instrument of document signed by the donor and attested by at least 2 witnesses. If the document of gift on record at Exhibit 59 is seen, then it would be quiet clear that the document is executed by Bhagirathi and it is attested by 3 witnesses. Admittedly, donor as well as donee were residing in the said house property and the acceptance of the registered gift deed would amount to the acceptance of the gift deed by the donee. The original gift dead is coming from the custody of the appellant-original plaintiff and that shows that he had accepted the gift. Therefore, in the circumstances, there is a valid gift in favour of the appellant-original plaintiff Vasant Rajaram Narvekar. No circumstances are pointed out to hold that the finding of the trial Court as well as the First Appellate Court regarding valid gift in favour of the appellant/original plaintiff is erroneous to such an extent that interference with the same in the Second Appeal is justified.

18. Apart from the above discussed material, there are other circumstances on record to hold that the claim of the appellant must be true and correct one. I have already pointed out that besides the contesting defendant Ankush Rajaram Narvekar, the appellant/original plaintiff Vasant Rajaram Narvekar has got two other brothers by name Yashwant and Prabhakar and they have got two sisters by name Asha and Gulab. The material on record shows that the appellant/

original plaintiff's brother Prabhakar has filed his written statement supporting the claim of the appellant/ plaintiff. Asha has entered into the witness box as witness of the appellant/plaintiff to support the case and she has deposed in support of the plaintiff's case. Though defendant No. 9 Yashwant was duly served with the suit summons, he has not come forward to deny the claim of the plaintiff Vasant Rajaram Narvekar. That conduct of Yashwant suggests that he also admits the claim of the appellant/original plaintiff Vasant Rajaram Narvekar. It must be remembered that these brothers and sisters of the contesting defendant Ankush Narvekar are deposing and conducting themselves against their own interest and they are supporting the claim of the appellant Vasant Narvekar. That conduct of those persons who would be co-owners with equal shares with that of the share of the contesting defendant Ankush Narvekar as per his own contention could not be ignored or lost sight of. That conduct of brothers and sisters of contesting defendant Ankush Rajaram Narvekar also supports the claim of the appellant/original plaintiff Vasant Rajaram Narvekar.

19. Therefore, in view of all above discussion and consideration, it would be quiet clear that the original plaintiff Vasant Rajaram Narvekar has proved that he has become owner of the suit property by the Gift Deed dated 29th May, 1973. Therefore, he is entitled to get declaration sought for. He is also entitled to get a decree for possession as well as perpetual injunction sought for. The First Appellate Court was not at all justified in reversing the decree of the trial Court and dismissing the plaintiff's suit.

20. Therefore, in the circumstances, I hold that the present Second Appeal will have to be allowed. Accordingly the present Second Appeal is allowed. I, therefore, set aside the judgment and decree dated 17th April, 1984 passed by the First Appellate Court in Civil Appeal No. 113 of 1978 and restore the judgment and decree passed by the trial Court on 3rd October, 1978 in Regular Civil Suit No. 71 of 1975 with only modification that the respondent/original defendant Ankush Rajaram Narvekar is granted time to vacate the house property till 15th January, 1995 and direct both the parties to bear their respective costs throughout.