

Digitally signed
by PALLAVI
MAHENDRA
WARGAONKAR
Date:
2023.03.09
17:24:42
+0530

SECOND APPEAL NO.46 OF 2020
WITH
CIVIL APPLICATION NO.37 OF 2020
IN
SECOND APPEAL NO.46 OF 2020

- Mr. Y.P. Narvankar, for the Appellants/Applicants.
- Mr. P.G. Kathane a/w Mr. Anjaykumar Kori, for the Respondent.

CORAM : MADHAV J. JAMDAR, J.
DATE : 20th FEBRUARY 2023

P.C. :

1. Heard Mr. Narvankar, learned counsel appearing for the Appellants and Mr. P.G. Kathane, learned counsel appearing for the Respondent.
2. It is the contention of Mr. Narvankar, learned counsel appearing for the Appellants that the learned Trial Court, while passing an order on the application bearing Exh.18 filed under Order VII Rule 11 of the Civil Procedure Code, 1908 rejected the plaint,

Pallavi

inter-alia, by applying Article 64 of the Limitation Act, 1963. He submitted that Article 64 applies for the suit for possession of immovable property based on previous possession and not on title, where twelve years period is prescribed as period of limitation from the date of dispossession. He submitted that in the present case, the possession is sought on the basis of title and therefore, applicable Article is Article 65, where the limitation of twelve years starts when the possession of the defendant becomes adverse to the plaintiff. He, therefore, submitted that the learned Trial Court committed grave illegality and the learned First Appellate Court has completely overlooked the same.

3. On the other hand, it is the submission of Mr. Kathane, the learned counsel appearing for the Respondent that Article 64 is correctly applied. He pointed out the averments in the plaint filed in Regular Civil Suit No.184 of 2010 and submitted that the entire emphasis in the plaint is that the plaintiffs were earlier in possession of the suit property and they are dispossessed by the Judgment and Decrees passed under the earlier round of litigation.

4. Thus, on the basis of above submissions, it is apparent that following substantial questions of law arise in this Second Appeal:-

Pallavi

- (I) Whether the learned Trial Court and learned First Appellate Court are right in applying Article 64 of the Limitation Act, 1963 while rejecting the Plaintiff?
- (II) Whether Article 65 of the Limitation Act, 1963 is applicable to the present case?

5. Before considering the rival contentions, it is necessary to set out the prayers in the plaint i.e. in the plaint of R.C.S. No.184 of 2010. The said prayers read as under:-

- “अ) दि.२/११/१९७० चे खरेदीपत्राप्रमाणे वादी हे दावा मिळकतीचे ग्रामपंचायत मिळकत नं.२२२ माल मुडशिङ्गी ता. हातकणंगले, जि. कोल्हापूर या मिळकतीचे मालक झालेले आहेत, असे हक्कघापन होवून मिळावे.
- ब) वादी यांना दिनांक २/११/१९७० च्या खरेदीपत्राप्रमाणे दावा मिळकतीचा पुनश्च कब्जा प्रतिवादीकडून मिळणेबाबत हुकूम व्हावा.
- क) जरूर तर दावा दुरुस्तीस परवानगी मिळावी.
- ड) अन्य योग्य ते हुकूम याच कामी व्हावेत.”

6. Few factual aspects which are necessary for deciding the present Second Appeal are as follows:-

- (i) On 26th July 1951, father of the present Respondent purchased the suit property. Thereafter, on 2nd November 1970, father of the present Appellants purchased the suit property from the Respondent.

Pallavi

(ii) Thereafter, Regular Civil Suit No.64 of 2002 was filed by the Respondent *inter-alia*, for injunction against Appellant and in the said Suit, the following issues were framed and the same were answered in favour of the present Respondent by Judgment and Decree dated 16th July 2007 passed by the learned Civil Judge, Junior Division, Peth-Vadgaon, at Vadgaon, District Kolhapur. The said issues and the findings are set out herein-below for ready reference:

Issues	Reasons
1. Whether Plaintiff proves that he is Owner of the Suit Property?	Yes
2. Whether Plaintiff proves that names of Defendants have illegally and unauthorisely entered into village Panchayat record?	No.
3. Whether he further proves that Defendants have illegally and forcefully constructed a room admeasuring 10' X 10' over the Suit Property?	Yes
4. Whether Defendants prove that their father has purchased the Suit Property from Plaintiffs on 2.11.1970 and since then they are in possession and enjoyment of the same?	No.
5. Whether Plaintiff proves obstruction?	Yes.
6. Whether suit is bad for non joinder of Necessary	No.

Pallavi

parties?	
7. Whether Plaintiff is entitled for declaration and injunction as prayed?	Yes, for injunction
8. Whether Plaintiff is entitled for mandatory injunction?	Yes.
9. What order and decree?	As per final order.

- (iii) Thus, the finding is recorded that present Appellant No.1 failed to prove that his father purchased the suit property from present Respondent on 2nd November 1970 and further failed to prove that since then he is in possession and enjoyment of the same.
- (iv) It is admitted position that the said Judgment and Decree is challenged by the present Appellant before the learned First Appellate Court and thereafter, in the High Court, by filing Second Appeal and the said Judgment and Decree dated 16th July 2007 is confirmed throughout.
- (v) Thereafter, the suit which is subject matter of the present proceedings is filed bearing Regular Civil Suit No.184 of 2010 on 15th November 2010 for the reliefs which are set out herein-above. By the impugned Judgment and Decree of the

Pallavi

learned Trial Court, the learned Trial Court has rejected the
 plaint by exercising power under Order VII Rule 11(a) and
 11(d) of Civil Procedure Code and the same has been
 confirmed by the learned First Appellate Court.

7. Although, it is clear that the present Appellants have raised certain contentions regarding dispossession on the ground that the Judgment and Decree passed in said Regular Civil Suit No.64 of 2002 is confirmed by the learned First Appellant Court and by the High Court in Second Appeal, however, reading of the entire plaint shows that the claim is raised on the basis of said sale deed dated 2nd November 1970. On the basis of the said sale deed declaration of ownership and possession is sought. Both the learned Courts have applied Article 64 of the Limitation Act while rejecting the plaint. The only controversy raised in the Second Appeal is whether Article 64 will apply or Article 65 will apply to the said suit. Article 64 and relevant part of Article 65 read as under:-

64. For possession of immovable property based on previous possession and not on title , when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
---	--------------	----------------------------

Pallavi

65. For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
--	--------------	--

(Emphasis added)

8. A bare perusal of Article 64 clearly states that the same will apply for a suit for possession of the immovable property based on previous possession and not on title, and for that purpose, twelve years limitation is provided and the time from which the limitation period begins is, from the date of dispossession. Article 65 is regarding the suit for possession of immovable property based on title and twelve years period is when the possession of the defendant becomes adverse to the plaintiff.

9. As already stated hereinabove, a reading of the entire plaint clearly shows that the suit has been filed for declaration of ownership and for possession on the basis of title. Thus, it is clear that Article 65 will apply to the present case and therefore, the learned Trial Court as well as the learned First Appellate Court committed grave illegality in applying Article 64 to the facts of the present case.

10. It is specifically recorded that both the learned counsel only advanced submissions regarding applicability of Article 64 or 65 of

Pallavi

the Limitation Act and no other contentions are raised.

11. Therefore, the impugned Judgment and Decree of the learned Trial Court dated 20th July 2016 passed below Exh.18 in Reg. Civil Suit No.184 of 2010 by which the plaint was rejected and the Judgment and Decree of the learned First Appellate Court dated 9th October 2018 passed in Regular Civil Appeal No.239 of 2016 confirming the decree passed by the learned Trial Court are quashed and set aside. Said Reg. Civil Suit No.184 of 2010 is restored to the file of the learned Civil Judge, Junior Division, Peth-Vadgaon, at Vadgaon, Kolhapur.

12. It is specifically clarified that except the point regarding which Article of the Limitation Act i.e. Article 64 or 65 will apply to the facts and circumstances of this case this Court has not considered the merits of the case and therefore, all the contentions on merits are expressly kept open.

13. Both the parties to remain present in the concerned Court of the learned Civil Judge, Junior Division, Peth-Vadgaon, at Vadgaon, Kolhapur on 20th March 2023 at 11.00 am for the purpose of pointing out this order to the learned Trial Court.

14. The learned Trial Court is requested to dispose of the said

Pallavi

Regular Civil Suit No.184 of 2010 in accordance with law, expeditiously and within a period of two years and further keeping in mind the pendency of other matters.

15. Second Appeal is disposed of in above terms. In view of the disposal of the Second Appeal, nothing survives in the Civil Application and the same is also disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]