

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 244 OF 2009
WITH
CIVIL APPLICATION NO. 108 OF 2022
WITH
INTERIM APPLICATION NO. 6734 OF 2025

Ramu Bhaguji Gadade, deceased through
Legal Heirs
1A.Shri Sahebrao Ramu Gadade & Ors.

... *Appellants*

: Versus :

Shri Bapu Limbaji Gadade & Ors.

...*Respondents*

Mr. Vilas B. Tapkir *with Ms. Mrunmayi Khambete, for the Appellants.*

Mr. Shriram Kulkarni *with Mr. Gaurav Ugale i/b. Mr. Sujay S. Palshikar
for Respondent No.1.A.*

Mr. Rahul Kate, *for Respondent Nos.1 to 3.*

CORAM: SANDEEP V. MARNE, J.

DATED: 9 OCTOBER 2026.

P.C.:

1) This is an Appeal filed under Section 100 of the Civil Procedure Code, 1908 assailing the judgment and order dated 25 March 2009 passed by District Judge-2 & Additional Sessions Judge, Baramati

in Regular Civil Appeal No. 147/1998. The learned District Judge has rendered a finding on the issue of limitation by holding that the issue is not barred by limitation.

2) The case has a chequered history. Appellant claims to have purchased 1/8th share in the suit property admeasuring 1 Hectare 7 Ares vide sale-deed dated 31 March 1987 from the predecessors of the Respondents. Respondents instituted Regular Civil Suit No. 157 of 1978 seeking injunction against the Appellants. The suit was dismissed on 29 July 1987. In the meantime, Respondents also filed a declaratory suit being Regular Civil Suit No. 60/1979 which also came to be dismissed by judgment and order dated 29 January 1988. Thereafter, Respondents filed Regular Civil Suit No. 20/1993 seeking partition of the suit property demanding their share in the suit properties. The suit was however dismissed on 29 October 1998 holding inter-alia that the suit was barred by limitation. Respondents filed Regular Civil Appeal No. 147 of 1998 before the District Court, Baramati which is allowed by judgment and order dated 24 February 2006. The Appellate Court has held that the Suit was within limitation. While reversing the decree of the Trial Court, the First Appellate Court has held that Plaintiffs/Respondents have 7/8th share and Defendant Nos. 1 to 12 have 1/8th share in the suit properties.

3) Aggrieved by Appellate Court's decree dated 28 February 2006, the Appellants filed Second Appeal No. 204/2007, which was partly allowed by this Court on 16 July 2007 remanding Regular Civil Appeal No. 147/1998 before the District Court for re-adjudication of the issue of limitation. By the impugned judgment and decree dated 3 June 2009, the First Appellate Court has held that Plaintiffs' Suit is not

barred by limitation. Aggrieved by the decree of the First Appellate Court dated 3 March 2009, the Appellants/Defendants have filed the present Appeal. The Appeal has been admitted by order dated 19 December 2013 by formulating following question of law :

'Whether the suit filed by the respondent-original plaintiff for partition and separate possession is barred by the provision under article 110 of the schedule 1 part 9 of the Limitation Act, 1963 ?'

4) I have heard Mr. Tapkir, the learned counsel appearing for the Appellants/Defendants, Mr. Kate, the learned counsel appearing for Respondent Nos.1 to 3 and Mr.Kulkarni, the learned counsel appearing for Respondent Nos.4 to 6. I have considered the submissions canvassed by them.

5) At the very outset, Mr. Tapkir fairly submits that the Appellants are not really aggrieved by determination of shares by the First Appellate Court in the previous round vide decree dated 24 February 2006. He however submits that parties are at serious disputes about the location of their respective lands. He submits that Appellants have purchased land on northern portion of the suit property and that so long as share of the appellants is protected on the northern side, Appellants have no real grievance.

6) Mr. Tapkir, further submits that in the remanded Appeal, the First Appellate Court ought to have passed an operative decree, which it has not done and beyond recording a finding on the issue of limitation, the First Appellate Court has not made any operative decree, which is capable of being executed.

7) So far as the second objection raised by Mr. Tapkir is concerned, in my view, after rendering findings by the First Appellate Court on the issue of limitation, the decree made by the First Appellate Court on 24 February 2006 would revive. This is on account of peculiar directions issued by this Court in Second Appeal No.204 of 2007. Paras-11 to 13 of the order dated 16 July 2007 passed by this Court in Second Appeal No. 204 of 2007 read thus :

11) Accordingly, this second appeal partly succeeds. The impugned Judgment and order is set aside and instead the Civil appeal no. 147 of 1998 is restored to the file of 1st Ad.Hoc. Addl. District Judge, Baramati, Dist. Pune to be heard and considered afresh on its own merits 'in relation to the question of suit being barred by limitation only'. If the issue of limitation is to be answered in favour of the appellants, that will go to the root of the matter as the suit itself will have to be thrown out at the threshold on that ground.

12) All questions on the point of such being barred by law of Limitation are left open to be decided on its own merits in accordance with law.

13) It is once again made clear that the appellate Court will answer the only limited issue of suit being barred by law of Limitation and no other issue, for other issues have been concluded by virtue of the present order. No order as to costs.

8) Thus, this Court directed re-adjudication only on the issue of limitation and specifically prohibited the First Appellate Court from deciding any other issue. If the First Appellate court was to hold that the Suit was barred by limitation, the same would have stood dismissed. However, if the issue of limitation was rendered in favour of the Plaintiff, the original decree dated 24 February 2006 was to remain undisturbed. This was the scheme of remand order made by this Court by order dated 16 July 2007. This Court did not disturb the findings

recorded by the First Appellate Court in its decree dated 24 February 2006. It only made remand on the limited issue of limitation. Now that the issue of limitation is answered in favour of the plaintiffs, the decree made by the First Appellate Court on 24 February 2006 would obviously revive.

9) Mr. Tapkir concedes the position that though the Second Appeal is admitted on the issue of limitation, the Appellants do not have any serious qualms about the findings recorded by the First Appellate Court on the issue of limitation in the impugned decree.

10) However, Mr. Tapkir raises serious objection about the First Appellate Court not deciding the exact location in the land where the shares of rival parties are to be distributed. In my view, this enquiry was not initiated before the Trial Court or the First Appellate Court. This is a Suit filed for partition and preliminary decree is made by the First Appellate Court on 24 February 2006 determining the shares of each parties. When preliminary decree is sent for dividing the land by metes and bounds to the Collector, the issue of location of land would obviously be gone into. Alternatively, when the decree is put in execution, even Executing Court can decide the issue of exact location of shares of the rival parties.

11) The Appeal has been admitted on the limited issue of limitation. Mr. Tapkir has fairly considered the point of limitation. In that view of the matter, nothing survives to be adjudicated in the Second Appeal. The Second Appeal is accordingly **dismissed**. All the pending Civil/Interim Applications also stand disposed of.

12) It is however clarified that the issue of location of shares of rival parties in the suit property is kept open to be decided either by the Collector or in the execution proceedings as is considered appropriate. All contentions of the parties in that regard are expressly kept open.

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[SANDEEP V. MARNE , J.]