

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

...  
47 APEAL FROM ORDER NO. 29 OF 2014  
WITH CA/2028/2014 IN AO/29/2014

CHANDAR IRANNA GUTTE AND OTHERS  
VERSUS  
ARJUNSING NARAYANSING BAYAS AND OTHERS

...  
Advocate for Appellants : Mr. Godhamgaonkar A.G.  
Advocate for Respondents 1,3,6, 9 to 13 : Mr. Mahesh  
V. Ghatge  
Advocate for Respondent No.5 : Mr. Amol Gandhi h/for  
U. B.Bilolikar

...

**CORAM : S. V. GANGAPURWALA, J.**

**DATE : 14th September, 2015**

**PER COURT :**

1. The present appeal from order is filed against the order passed by the District Court setting aside the judgment of the trial court, remanding the matter back to the trial Court, upon holding that the provisions of Article 60 of the Limitation Act, as applied by the trial Court, is inapplicable and the parties will be governed by provisions of Article 110 of the Limitation Act.

2. Mr.Godhamgaonkar, learned counsel for the appellants, submits that the appellants are not the

members of the joint family. They are the transferee of the property. Article 110 would apply only if the suit is amongst the co-sharers. The plaintiff, as on the date of filing of the suit, was aged 25 years. The suit is not filed within three years on attaining age of majority by the plaintiff. The trial Court had rightly held that the suit is barred by limitation. The appellate court, applying wrong provision of the Limitation Act, has set aside the judgment of the Trial Court. The learned counsel relies on the judgment of the Apex Court in a case of **Vishwambher & ors. Vs. Laximi Narayan, AIR 2001 SC 2607** to contend that Article 60 would apply.

3. Mr.Ghatge, learned counsel for respondents 1,3,6, 9 to 13, supports the impugned judgment and order and submits that the District Court has rightly applied the provisions of Article 110 of the Limitation Act.

4. I have considered the pleadings and the judgment and order passed by the trial Court, so also the appellate Court.

5. The suit, basically, is filed for partition and separate possession and consequently, declaration was sought to the alienation made by uncle of the plaintiff. Article 60 of the Limitation Act would apply, if the ward challenges the alienation made by the guardian. In such a case, limitation period is three years from the date, the ward attains the age of majority.

6. In the present case, defendant No.1 is the eldest uncle of the plaintiff. The alienation is said to have been made by Mahavirsingh and Narayansingh. Narayansingh has died in 1972 as it appears from the genealogy submitted in paragraph 2 of the plaint.

7. Karansing is defendant No.1. Naturally, Mahavirsingh, *prima facie*, would not be the guardian. However, it is upon the evidence led, said fact can be concluded by the trial Court.

8. For relief of partition and separate position, the limitation period is 12 years from the date the person is excluded. The suit property consists of

alienated and unalienated properties. Naturally, Article 110 of the Limitation Act also would be applicable. Some of the properties are still unalienated.

9. In light of the above, the trial Court was certainly in error in dismissing the whole suit relying on Article 60 of the Limitation Act. The Appellate Court remanded the matter, stating that Article 110 would be applicable. Of course, the parties are at liberty to put forth their stand before the trial Court as to the status of the person alienating the property, *vis-a-vis*, the plaintiff and upon the evidence being adduced, the Court can further conclude as to, what Article of the Limitation Act would be applicable for deciding the suit. The trial court will have to consider the factual aspects of the matter while considering as to what Article of the Limitation Act would govern the parties. The parties are at liberty to put forth their stand before the trial court in this regard.

10. In a case of ***Vishwambher & ors.*** (referred supra),

the facts were different, where the alienation made by real mother was assailed by the ward, after lapse of 3 years. In the present case, *prima facie*, the same does not appear to be the fact. The trial Court shall consider the facts on record and after hearing the parties, would arrive at an appropriate conclusion.

11. In the light of the above, the Appeal from Order stands disposed of.

( S. V. GANGAPURWALA, J. )

JPC