

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.84 OF 2014
IN
SECOND APPEAL NO.729 OF 2011

Gangadhar Mokindrao Deshmukh,
Since deceased, through his L.R.s.

A) Narhari s/o Gangadhar Kadam,
Age-31 years, Occu:Agri,
R/o-Palam, Tq-Palam,
Dist-Parbhani,
and others.

**...APPLICANTS/
REVIEW PETITIONERS**

VERSUS

Sumanbai Rustumrao Siraskar,
Age-65 years, Occu:Household,
R/o-Palam, Tq-Gangakhed,
Dist-Parbhani
and others.

...RESPONDENTS

...

Mr. Dhananjay Deshpande Advocate for
Applicants.

Mr. S.B. Ghute Advocate for Respondent
Nos.1 and 3.

Respondent No.2 served, absent.

...

CORAM: A.B. CHAUDHARI, J.

DATE : 6TH OCTOBER, 2015

ORDER :

1. Perused the Judgment under challenge in this Review Application. Mr. Deshpande, learned counsel for the Review Petitioner submitted that there is error apparent on the face of record in that the Plaint itself makes out a case of long and continuous possession and consequently adverse possession.

2. This Court has dealt with the aspect in necessary details while passing the order in Second Appeal. I quote Para 5 from the impugned order, which reads thus:

"5. In so far as the plea of limitation is concerned, the same is mixed question of facts and law. The plea of adverse possession is required to be set up with necessary details and

a very long continuous possession for number of years, does not constitute adverse possession. Reading of last paragraph of the Written Statement shows that except using the word "adverse possession", there are no pleadings much less adequate pleadings to support such a stand. As regards the plea of limitation, the paragraphs of the plaint read over to me, to my mind, do not disclose that the Suit was barred by limitation. There are no pleadings about the date of knowledge by the plaintiff nor to find out whether the Suit is barred by limitation or not. The pleadings to that effect are as vague as it can be. That apart, the issue of limitation was never framed by the trial Court and nothing prevented the defendant from applying for recasting of issue. To say that it was the decree of the Court U/s 3 of the Limitation Act, to dismiss the Suit barred by limitation, is not acceptable since the issue is one of the fact and law to be dealt with upon the evidence of the parties as well. Though the mutation

entries had taken place way back in the year 1965 according to the appellant, there is nothing in the pleadings or evidence as to the exact date of posting of the knowledge thereof to the plaintiff so that the Court can endeavour to find out whether the Suit was barred by limitation or not."

3. In view of the above, I do not find any error in the impugned order. Review Application is rejected.

[A.B. CHAUDHARI, J.]

asb/OCT15