

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 33 of 2013

(Dattaram Anant Arondekar Appellant

versus

Dhondiram @ Dhondur Shankar
Panshikar Respondent)

Mr. Amogh Karandikar, Advocate for appellant.
Mr. Gangadhar J.Sabnis, Advocate, for respondent
No.1.

CORAM : R.K.Deshpande, J.
DATED : 4th AUGUST, 2015.

P.C.

The trial Court passed a decree granting a declaration that the sale deed dated 06.12.1991 executed by the defendant No.1 in favour of the defendant No.11 is illegal and not binding on the plaintiff in respect of his share in the suit property. The defendant No.11 is directed to hand over the possession of the plaintiff's share i.e. 1/22nd share in the suit property. The decree dated 23.12.2004 passed in Regular Civil Suit No. 167 of 2000 was the subject matter of challenge in Regular Civil Appeal No. 29 of 2009, which was dismissed on 26.09.2012. The original defendant who preferred an appeal before the lower appellate Court is before this Court in this second appeal.

The learned counsel for the appellant fairly concedes that the appellant/defendant No.11 was proceeded ex parte before the trial Court and it was not the ground raised before the lower appellate Court or decided that the defendant No.11 was not served with the suit summons. He submits that in spite of this, the defendant No.11 can be permitted to raise the question of law. He submits that the suit should have been dismissed as barred by law of limitation.

The question of limitation is not the pure question of law, but it is a mixed question of law and fact. The sale deed dated 06.12.1991 was challenged in the suit which was registered on 29.11.2000. Para 10 of the plaint shows that the sale deed dated 06.12.1991 for the first time came to the notice of the plaintiff in the month of January, 1998. It cannot, therefore, be said that the suit was barred by limitation when it was registered on 29.11.2000. The limitation prescribed being of 3 years from the date of knowledge. No evidence is led by the defendant No.11 to show that the sale deed was brought to the knowledge of the plaintiff prior to the month of January, 1998. No substantial question of law arises, the second appeal is dismissed.

Consequently, civil application does not survive and the same stands dismissed.

(R.K.DESHPANDE, J.)

Rvjalit