

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 253 OF 2015
WITH
CIVIL APPLICATION NO.554 OF 2015
IN
SECOND APPEAL NO.253 OF 2015**

1. Abhiman Sudam Chavan
and Ors

..Appellants

Vs

1. Mandabai Appa Mane and
Ors.

.. Respondents

Mr. Sanjay Thokade, Advocate for Appellants.

Mr. Vivek Patil i/b Arjun Pawar and Shrikant Patil for
respondents.

CORAM : R.G.KETKAR,J.
DATE : 23/04/2015

PC:

1. Heard Mr. Sanjay Thokade, learned counsel for the appellants and Mr. Vivek Patil, learned counsel for the respondents at length.

2. By this Appeal under section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the original defendants no.2A to 2C have challenged the Judgment and decree dated 28.6.2000 passed by the learned Civil Judge, Jr.Dn., Madha in Regular Civil Suit No.50 of 1993 as also the Judgment and decree dated 3.2.2015 passed by the learned Adhoc District Judge-1, Solapur in Civil Appeal No.320 of 2000. By these

orders, the Courts below partly decreed the suit instituted by respondents no.1 to 3F and declared that each of the original plaintiffs and original defendants have 1/5th share in the suit fields. Their shares will be given to their respective successors. The Courts below also directed that the suit land which was sold out to original defendant no.3 will be put to the share of original defendant no.2 while effecting the partition. The suit to the extent of determination of mesne profits was dismissed.

3. In support of this Appeal Mr. Thokade strenuously contended that the suit land is Inam Class VI B land. The suit land was resumed and was re-granted to Krishna Aaba Chavan and Sandipan Krishna Chavan. Sandipan is admittedly the father of defendants 2A to 2C. He submitted that Mutation Entry No.1940 to that effect was certified way back on 8.2.1964. The plaintiffs did not challenge that mutation entry. He further invited my attention to examination-in-chief of PW 1 Chhagan Yeshwant Mane at Exh.91 wherein he deposed that his grand father Krishna Chavan is from Ramoshi community. In cross examination, the witness deposed that after the death of Krishna on 15.2.1969, the plaintiffs demanded partition some time in 1974/976. The defendants refused to effect partition. He submitted that thus the witness of the

plaintiffs admitted that the defendants refused to effect partition some time in the year 1976. The suit is, however, instituted in the year 1993. In view of Article 110 of Limitation Act, 1963, the suit is clearly barred by limitation. He further submitted that both the parties relied upon the Mutation Entry no.1940 certified on 8.2.1964 which clearly shows that the suit land was regranted to Krishna Chavan and Sandipan Chavan. He submitted that the mutation entry, though does not create any right, title and interest, it has presumptive value and the said presumption can be rebutted by leading evidence. However, the plaintiffs have not led any evidence in rebuttal. In support of this submission, he relied upon the following decisions:

1. Shekoji Bhimrao Vs. Motiram Maruti Maratha, 2007 (1) ALL MR 593;
2. Dada Bhagwan Vs. tulsabai, 2008 (3) Mh.L.J. 475;
3. Shamrao Ganpat Chintamani, 2008 (2) Mh.L.J. 819.
4. On the other hand, Mr. Patil supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below held that the suit lands are self-acquired properties of Krishna Chavan who passed on 15.2.1969, leaving behind original plaintiffs-daughters and original defendants-sons. The said Krishna died intestate

without making any arrangement. In the year 1993, the plaintiffs asked for partition and separate possession. The defendants denied the plaintiffs' share. In view thereof, the plaintiffs were constrained to institute the suit for partition. He further submitted that in the facts and circumstances of the present case, Article 110 of the Limitation Act is not applicable. Finally, he submitted that the mutation entry does not confer any right, title and interest. Defendants 2A to 2C failed to prove that Sandipan became joint owner with Krishna Chavan.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Mr. Thokade relied upon Article 110 of the Limitation Act to contend that the plaintiffs were excluded from joint family properties. They should have enforced right to share therein within 12 years when exclusion became known to the plaintiffs. From the evidence of the plaintiffs' witness, it is evident that the plaintiffs were excluded in the year 1976 and, therefore, the suit is barred by limitation. I do not find any merit in this submission. As noted earlier, the Courts below, after appreciating the evidence on record, have held that the suit lands are self acquired properties of Krishna Chavan. He died intestate. That apart, defendant no.2A to 2C

did not plead and prove the case of ouster. In view thereof also, Article 110 of the Limitation Act is not applicable. Reliance placed by Mr. Thokade on Mutation Entry no.1946 certified on 8.2.1964 and the decisions referred herein above do not advance the case of defendants 2A to 2C. In the case of Dada Bhagwan (supra), learned Single Judge of this Court held that the mutation entry in the record of rights does not create any right, title or interest. The mutation, however, has presumptive value under section 157 of the Maharashtra Land Revenue Code, 1966 and the said presumption is rebuttal. No greater importance can be given to the mutation. In view thereof, reliance placed on this decisions do not advance the case of the defendants as the defendants failed to prove that they became owners of the suit land. In view thereof, it cannot be said that the findings recorded by the Courts below are perverse, being based upon no evidence, or that they are contrary to evidence on record. The Appeal does not raise any substantial question of law. Hence, Appeal fails and the same is dismissed. In view of dismissal of Appeal, Civil Application No.554 of 2015 for stay does not survive and the same is disposed of.

6. At this stage, Mr. Thokade orally applies for continuation of the order dated 22.2.2011 passed by the learned District

Judge below Exh.5 in Civil Application No.295 of 2010. By that order, the learned District Judge stayed execution of the decree passed by the trial Court till next date in respect of handing over of possession. The said order was continued on 28.3.2012 till further orders.

7. In view thereof, notwithstanding dismissal of Second Appeal, execution of the partition decree in respect of handing over of possession only is stayed for a period of 12 weeks from today. In the meantime, let partition proceedings go on, however, physical possession shall not be delivered.

(R.G.KETKAR, J.)