

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

SECOND APPEAL NO. 327 of 2013

(Nagnath Ajinath Jagtap and others		Appellants
	versus	
Shobha Mahadev Kharade and others		Respondents)

Mr. Sarang S. Aradhye, Advocate for appellants.
None for respondents

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

P.C.

C.A.S. No. 376 of 2015

Heard the learned counsel appearing for
the appellants.

For the reasons stated in the application,
the application is allowed.

Second appeal is restored. Application
stands disposed of.

S.A. No. 327 of 2013.

Heard the learned counsel for the
appellants on the merits of the matter.

The trial Court has passed a decree for partition and separate possession on 31.10.2009 in Regular Civil Suit No. 151 of 2000. The lower appellate Court has modified the decree passed by the trial Court by its judgment and order dated 28.01.2013 passed in Civil Appeal No. 295 of 2009. The original defendants are before this Court in this second appeal.

Both the courts have held that the property is the ancestral property and therefore, decree for partition and separate possession has been passed.

The learned counsel for the appellants has raised the plea of limitation. He has invited my attention to the statement made by the plaintiff in her evidence that after the death of father, the share was demanded in the property and it was refused and therefore, the suit has been filed. He submits that the father expired in the year 1995 and the suit is filed in the year 2000, which was barred by Article 113 of the Limitation Act, being beyond the period 3 years.

I have gone through the judgments and orders passed by both the Courts below. I have also gone through the copy of plaint as well as written

statement. In the plaint, specific averment is that on the date of Gudi Padwa, partition was asked for and it was denied. This fact has not been disputed by the defendants in the written statement, though the plea is raised that the suit is barred by limitation. In the absence of there being any specific denial and an assertion that there was a demand for partition made earlier, which was refused and the fact that the suit filed is beyond the date of limitation, the statement of the plaintiff relied upon by the learned counsel for the appellants cannot be accepted. No substantial question of law arises, the second appeal is dismissed.

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

(R.K.DESHPANDE, J.)

Rvjalit