

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.361 of 2013
(Abbas Baban Mulani v. Sardar Abdul Mulani and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri Milind Deshpande, Advocate for Appellant.
Shri V.H. Toraskar, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.

Dated : 22nd June, 2015

The Trial Court passed a decree in Regular Civil Suit No.249 of 2003 granting a declaration that the plaintiff and the defendant Nos.2 to 6 are the owners of the suit land. The defendant No.1 is directed to hand over the possession of the suit land to the plaintiff and defendant Nos.2 to 6 and an enquiry into mesne profits has also been ordered. This decision of the Trial Court rendered on 29-11-2005 was the subject-matter of challenge in Regular Civil Appeal No.261 of 2005, which has been dismissed on 12-3-2013. Hence, the defendant No.1 is before this Court in this second appeal.

The undisputed factual position is that one Jaitunbi was the owner of the suit property and the plaintiff and the defendant Nos.2 to 6 are her legal heirs. The defendant No.1 filed Regular Civil Suit No.319 of 1976 against the plaintiff and the defendant Nos.2 to 6 for specific performance of contract dated 21-11-1974 with the said Jaitunbi for purchase of the suit property. The said suit was dismissed and ultimately the decision of the suit has attained the finality when Second Appeal No.365 of 1989 preferred by the defendant No.1 was dismissed on 27-9-1996.

The suit in question was filed on 26-6-2003 for possession showing the cause of action as dismissal of Civil Appeal No.365 of 1989 on 27-9-1996.

The only question raised before the lower Appellate Court was regarding limitation for filing the suit in question. According to the learned counsel for the appellant/defendant No.1, the limitation was governed by Article 58 of the Limitation Act, which prescribes a period of three years from the date when the right to sue first accrues for claiming any other declaration. The Appellate Court has held that the said provision is not applicable, but the suit was governed by Article 65 of the Limitation Act, which prescribes a period of 12 years when the possession of the defendant No.1 becomes adverse to the plaintiff. Article 65 of the Limitation Act contemplates a suit for possession of immovable property or any interest based on title. The possession of the defendant No.1 became adverse to the plaintiff on 26-9-1996. The suit in question was filed in the year 2003, which was perfectly within a period of 12 years.

Keeping in view the nature of the suit, no substantial question of law arises against the finding recorded by the Courts below that the suit was governed by Article 65 of the Limitation Act.

Thus, the second appeal is dismissed.

In view of the dismissal of the second appeal, Civil Application No.1076 of 2013 does not survive and the same stands disposed of.

Judge.

Lanjewar