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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.579 OF 2013
WITH
CIVIL APPLICATION NO.1509 OF 2013
WITH
CIVIL APPLICATION NO.1510 OF 2013
WITH
CIVIL APPLICATION NO.1511 OF 2013

Bharat Yadav Maske	..Appellant.
V/s.	
Balaji Dagadu Kadam and Ors.	..Respondents.

Mr.Dilip Bodake for the appellant.
None for the respondents.

CORAM : R.K.DESHPANDE, J.

DATED : 5TH AUGUST, 2015

P.C. :-

1. In Regular Civil Suit No.256 of 1995, the trial Court has passed a decree in favour of the plaintiffs on 13th April, 2000. The operative part of the order is reproduced below :-

- “ 1. The suit is hereby partly decreed.*
- 2. So far as the suit field Gat No.63 is concerned the suit is hereby dismissed.*
- 3. It is hereby declare that, each of the plaintiff Nos.1 and 2 are having 1/6th share in the suit*

field Gat No.123/2. It is also hereby declared that and made it clear that, each of the plaintiff and the defendants No.1 and 6 are having 1/6th share in the suit field Gat No.190.

- 4. Partition be effected accordingly and while effecting the partition, the defendant No.7 be put in possession of 1/6th share of defendants No.1 and 6 in suit field Gat No.190 as the defendant No.1 has made sale exceeding his share and the defendant No.6 also did not challenge sale of his share.*
- 5. After effecting partition of 1/6th share of plaintiffs No.1 and 2 in suit field Gat No.123/2, the remaining portion be put to the share of defendant No.7.*
- 6. Prescript be forwarded to the Collector, Solapur for effecting partition accordingly.*
- 7. Parties to bear their own costs.*
- 8. Decree be drawn-up accordingly. “*

2. Original defendant No.7 had preferred Civil Appeal No.219/2000 before the lower Appellate Court which has been dismissed on 20th April, 2013. Hence, the present Second Appeal is filed by the original defendant No.7.

3. This Second Appeal is preferred only by the original defendant No.7 who is concerned with Gat No.123/2 which has

been sold by defendant No.1 to defendant No.7 by registered sale deed dated 12th January, 1987. The Courts below have held that this property is the ancestral property and the plaintiff Nos.1 and 2 are entitled to 1/6th share each in this property. The remaining portion is directed to be put in the share of defendant No.7.

4. The learned counsel for the appellant Mr.Bodake has urged that the plaintiffs ought to have claimed a relief of declaration that the sale deed dated 12th January, 1987 executed by defendant No.1 in favour of defendant No.7 is not binding upon them to the extent of their share in the ancestral property. Inviting my attention to the provisions of Sections 31 and 34 of the Specific Relief Act, 1963, it was urged that the Courts below have committed an error of law in passing a decree for partition and separate possession in respect of Gat No.123/2. He further submits that even if it is to be accepted that the plaint seeks relief of such declaration, still, the suit would be barred by law of limitation.

5. I have gone through the copy of the plaint. Plaintiff Nos.1 and 2 are shown to be aged about 20 and 12 years respectively on the date of filing of the suit i.e. 19th October, 1995 and plaintiff No.3 is shown to be of 19 years of age. There

are specific averments made in the plaint that the suit properties including Gat No.123/2 are the ancestral properties and it has been sold by defendant No.1 who was suffering from the vices, to the defendant No.7 without there being any legal necessity. It is also stated that the sale deed is in excess of the share of the defendant No.1 in the suit property which is not binding upon the plaintiffs, since in the prayer clause the relief claimed is that the sale deed is executed by defendant No.1 in favour of defendant No.7 in respect of his 1/5th share of the plaintiffs and the sale deed in respect of 1/5th share of the plaintiffs is not binding and liable to be cancelled, the suit for partition and separate possession in respect of 1/5th share of the plaintiffs be decreed along with possession. It cannot be, therefore, said that there was no relief of declaration is claimed that the sale deed executed by defendant No.1 in favour of defendant No.7 in respect of Gat No.123/3 is not binding upon the plaintiff to the extent of their 1/5th share in the suit property.

6. So far as the question of limitation is concerned, the limitation would start running in respect of the plaintiff Nos.1 and 3 who are minors upon removing the legal disability as contemplated under section 6 of the Limitation Act, 1963. The limitation to challenge the sale deed dated 12th January, 1987 would start running from the date on which the plaintiffs had

attained majority. It is not the case that the suit is not within the period of limitation from the date on which the plaintiffs attained the majority.

7. According to learned counsel for the plaintiffs, some of the ancestral properties are not included in the suit for partition and this fact is admitted by PW1 examined on behalf of plaintiff No.4. Since the present Second Appeal which is preferred by defendant No.7 is pertaining only to declaration that the sale deed dated 12th January, 1987 is not binding upon the plaintiffs, the question of non inclusion of certain properties does not arise. No substantial question of law arise in the present appeal. The appeal is dismissed. Any interim orders if passed, the same shall stand vacated.

8. In view of the dismissal of the appeal, the Civil Applications do not survive and the same are also disposed of.

JUDGE