

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

WRIT PETITION NO.10748 OF 2014

Prakash Rangrao Sutar : Petitioner
versus
Vilas Shivaji Patil : Respondent.

Mr. D S Sawant i/by Mr. Rajesh B Parab for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 05th January 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 9/9/2014 passed by the learned Civil Judge, Junior Division, Kagal by which order the Trial Court has decided the preliminary issue and has ruled that the suit as filed was within limitation and accordingly disposed of the objection raised on behalf of the Defendant i.e. the Petitioner herein as regards the suit being barred by limitation.

2 The suit in question has been filed by the Respondent herein – the original Plaintiff seeking a declaration that the sale deed dated 17/09/2002 executed by the father of the Plaintiff in favour of the Defendant in respect of the sale of 7 Ares land is not binding on the Plaintiff. The Plaintiff has also prayed for an injunction restraining the Defendant i.e. the Petitioner herein from obstructing the possession of the Plaintiff in respect of the said suit property. The Petitioner herein i.e. the original Defendant raised a preliminary

objection on the ground that since the sale deed dated 17/09/2002 is sought to be challenged and since the suit is filed in the year 2012, the suit is barred by limitation having regard to the limitation prescribed by Article 59 of the Limitation Act. In view of the said objection raised by the Defendant, the Trial Court framed a preliminary issue viz. Whether the suit is barred by limitation?

3 In so far as the Plaintiff is concerned, it has been averred by him that he acquired knowledge of the said sale deed dated 17/09/2002 when the Defendant sought to mutate his name in the revenue record in the year 2012 as also when the Defendant came at site and tried to obstruct the Plaintiff from cutting grass.

4 The parties in support of their respective assertions led evidence. The Petitioner i.e. Prakash Rangrao Sutar has examined himself whereas the Plaintiff examined himself in support of his case that the suit as filed is within limitation.

5 The Trial Court adjudicated upon the said preliminary issue on the basis of the material which had come on record. The Trial Court recorded a finding that the case of the Plaintiff that he acquired knowledge of the sale deed dated 17/09/2002 in the year 2012 deserves to be accepted as there was no cogent material placed on record by the Defendant to attribute the

knowledge to the Plaintiff of the said sale deed prior to the year 2012. The Trial Court adverted to the contention of the Defendant viz that the Plaintiff was a major at the time when the sale deed was executed being 27 years of age and therefore the suit was required to be filed within 3 years of the said sale deed and the suit being filed in the year 2012 was grossly belated having regard to the limitation prescribed by Article 59 of the Limitation Act.

6 It is an undisputed position that though the evidence was led on behalf of the Defendant, no facts have been brought on record so as to attribute knowledge to the Plaintiff of the said sale deed prior to the year 2012 and the only contention which was raised on behalf of the Defendant seems to be that the Plaintiff was a major at the time when the said sale deed was executed and since the Plaintiff was residing with his father, the knowledge of the said sale deed would have to be attributed to the Plaintiff.

7 In my view, the said contention cannot be accepted in the teeth of the fact that the Defendant has not placed any material on record as regards prior knowledge of the Plaintiff of the said sale deed dated 17/09/2002. The fact that the Plaintiff was a major, in the absence any material attributing knowledge to the Plaintiff of the said sale deed prior to the year 2012, cannot aid the Defendant to contend that the suit is barred by limitation. The Trial Court in my view, has dealt with the matter in the right perspective and

answered the issue of limitation in favour of the Plaintiff. Hence no case for interference in the writ jurisdiction of this Court is therefore made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]