

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

SECOND APPEAL NO. 268 of 1992

Gulab Mahiboob Bagwan,
since deceased through heirs &
Legal Representatives:-

- 1] Shri Hamid Gulab Bagwan,
aged 49 years, Occ. Agril.
- 2] Shri Shabbir Gulab Bagwan,
aged 45 years, Occ. Agril.
- 3] Shri Masjid Gulab Bagwan,
aged 45 years, Occ. Agril.
- 4] Shri Fajalu Gulab Bagwan,
since deceased thr. Heirs and L.R's
- 4A] Smt. Farzama Fajalu Bagwan
aged 43 years, Occ. Labour & Agril.
- 4B] Master Sameer Fajalu Bagwan
aged 14 years, Occ. Education.
Thr. Natrual guardian & mother
Appellant No. 4A
- 4C] Ms. Reshama Fajalu Bagwan
aged 18 years, Occ. Labour & Agri

Appellant No. 4A to 4C r/o.
Pandharewadi, Tal. Pandharpur,
Distt. Solapur.
- 4D] Mrs. Aasma Mahiboob Bagwan,
aged about 20 years, Occ. Labour & Agri
Resident of Village Jawala,
Tal. Sangola, Distt. Solapur
- 5] Shri Salim Gulab Bagwan,
aged 41 years, Occ. Agril.

6] Shri Zakir Gulab Bagwan,
aged 39 years, Occ. Agril.

Nos. 1 to 6 are R/o. Pandharwadi,
Tal. Pandharpur, Distt. Solapur.

7] Sou. Rajiya Kondaji Bagwan,
age 35 years, Occ. Agril
R/o. At & Post Karkamb,
Tal. Pandharpur, Distt. Solapur..

APPELLANTS
(Org.Plitffs.)

.. **Versus** ..

Damu Kashinath Bhosale,
age 50 years, Occ. Agriculturist,
R/o. Pandharewadi (Mendhapur),
Tal. Pandharpur, Distt. Solapur..

RESPONDENT
(Org.Deft)

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Mr. Dnyaneshwar Deshmukh, Advocate, for appellants.
None for Respondent

CORAM : R.K.Deshpande, J.
DATED : 18th JUNE, 2015.

ORAL JUDGMENT

1] The appellant is the original plaintiff who filed Regular Civil Suit No. 218 of 1986, claiming the declaration that the sale deed dated 13.01.1980 does not confer any title or interest upon the defendant in respect of the suit property and the plaintiff is the exclusive owner of the suit property. The another relief claimed is that of the permanent injunction restraining the defendant from disturbing the possession of

the plaintiffs or encroaching upon the suit land in any manner. The suit was decreed by the trial Court by its judgment and order dated 31.08.1988. In Civil Appeal No. 649 of 1989, the lower appellate Court has reversed the decision of the trial Court on 12.03.1992 and the suit filed by the plaintiff has been dismissed. Hence, the original plaintiff is before this Court in this second appeal.

2] On 30.06.1992, this court passed an order as under;

“Admit, on the ground of limitation as the substantial question of law as framed at ground (U)”

The ground no. (U) of the memo of appeal runs as under;

“That, the lower court ought to have seen that the Appellant has filed the suit for injunction and as such, the issue on the point of limitation is unwarranted.”

The lower appellate Court reversed the decree passed by the trial Court and dismissed the suit essentially on the ground of limitation though the findings are also recorded on the merits of the matter.

3] I have gone through the judgment and order passed by both the Courts below and I find that the findings on merits

by the lower appellate Court are cryptic and it has failed to discharge its duty and obligation to deal with the considered findings recorded by the trial Court on all the issues. In view of this, if the findings recorded by the lower appellate Court on the issue of limitation is reversed in this second appeal, then the matter will have to be sent back to the lower appellate Court to decide the appeal on its own merits in accordance with law. Hence, the substantial question of law framed by this Court is to be considered as under;

Whether the suit in question was barred by limitation.

4] The reliefs claimed in the plaint are already reproduced in para 1 above. The matter would, therefore, be governed by Article 113 of the Limitation Act, 1963, which runs as under;

PART X – SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD.

113	Any suit for which no period of limitation is provided elsewhere in this schedule	3 years	When right to sue accrues
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From the averments made in the plaint, it is apparent that it is essentially a suit for grant of injunction restraining the defendant from interfering with the possession of the plaintiffs over the suit property on the basis of the sale deed dated

30.01.1980 which was not to be acted upon and the plaintiff continues to be the owner of the suit property. The period of limitation of 3 years prescribed under Article 113, therefore, starts running from the date when the right to sue accrues. The plaintiff claims to be in possession of the suit property and hence, the right to sue would arise for claiming declaration and injunction when there is a threat of dispossession of the plaintiff over the suit property or of interfering or obstruction in peaceful possession of the plaintiff over the suit property. The cause of action shown in the plaint is of 15.06.1986 when the defendant tried to obstruct the possession of the plaintiff over the suit property. The suit was filed on 19.06.1986. It cannot, therefore, be said that it was barred by law of limitation as prescribed under Article 113 of the Limitation Act. The suit was perfectly within a period of limitation.

5] The question as to whether the suit is barred by limitation is normally a mixed question of facts and law. The plaint in question cannot be rejected on the ground that, from the statements made in the plaint, the suit seems to be barred by the period of limitation. If the case of the defendant was that the suit was barred by limitation, then it was necessary for the defendant to point out the provisions governing the law

of limitation applicable to the suit in question and raise a dispute in respect of cause of action. The lower appellate Court has not even referred to any such provision of law which governs the question of limitation in respect of the suit in question. There is no dispute raised in respect of cause of action shown in the plaint. There is no basis for the lower appellate Court to consider and decide the question of limitation which was unwarranted. Hence, the substantial question of law framed by this Court is answered in the affirmative.

6] In the result, second appeal is allowed. The judgment and order dated 12.03.1992 passed by the lower appellate Court in Civil Appeal No. 649 of 1989 is hereby quashed and set aside. The matter is remitted back to the lower appellate Court to decide the same on its own merits in accordance with law. The lower appellate Court to decide the matter within a period of six months from the date of first appearance of the parties before it. The appeal is allowed with costs.

The interim order passed by this Court pending second appeal shall continue to operate pending the decision of appeal by the lower appellate Court.

(R.K.Deshpande, J.)