

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

**SECOND APPEAL NO.307 OF 2013
ALONG WITH
CIVIL APPLICATION NO. 851 OF 2013
AND
CIVIL APPLICATION NO.753 OF 2015**

Hanumant Dagadu Bhosale	...	Appellant
V/s.		
Smt.Kasturbai Vitthal Jagtap & Ors.	...	Respondents

.....

Mr.Dilip Bodake, Advocate for the Appellant.
Mr.Sharad T. Bhosale, Advocate for the Respondents.

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CORAM : RAVI K. DESHPANDE, J.

DATED : JULY 1, 2015.

P.C.

The trial Court passed a decree for partition and separate possession which has been confirmed in Appeal by the Lower Appellate Court. Hence, this Second Appeal is against the concurrent finding of fact recorded by the Courts below.

2 The main contention raised by the learned counsel appearing for the appellant is that the suit was barred by limitation to challenge the sale-deeds executed on 5th January, 1994 and 13th April, 1994. The suit was filed on 17th August,

1999. The averments in the plaint show that the plaintiff got knowledge of this sale-deeds in the year 1999 itself when obstruction was created. The cause of action therefore arose on in the year 1999 more particularly on 6th August, 1999. Except bare denial, no other defence was raised.

3 The suit is governed by Article - 59 of the Limitation Act which reads as under:

PART IV - Suits Relating To Decrees And Instruments

<i>59. To cancel or set aside an instrument or decree or for the rescission of a contract</i>	<i>Three years</i>	<i>When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or to the contract rescinded first become known to him.</i>
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The suit for cancellation of sale-deeds has to be filed within a period of three years from a date when such sale-deeds for the first time becomes known to the plaintiff. The question of limitation is a mix question of law and fact. The cause of action shown in the plaint has not been disputed. Once it is held that the cause of action arose on 6th August, 1999 on which date the plaintiff has got knowledge of the sale-deeds, the suit filed in the same year cannot be said to be barred by limitation. Hence, no substantial question of law arises on this aspect. Second Appeal is dismissed.

5 In view of the order passed in Second Appeal, all Civil Applications do not survive and are disposed of accordingly.

(RAVI K. DESHPANDE, J.)