

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

**SECOND APPEAL NO.323 OF 2015
WITH
CIVIL APPLICATION NO.725 OF 2015**

Mohammad Dadu Mujawar
(Since deceased through LRs)
1(A) Smt.Mahirajbi Mohammad Mujawar
& Anr. ... Appellants

V/s.

Nama Dhondi Patil ... Respondent

.....
Mr.Abdul Karim Niziduddin Mulla, Advocate for the Appellants.
.....

CORAM : RAVI K. DESHPANDE, J.

DATED : JULY 6, 2015.

P.C.

The trial Court dismissed Regular Civil Suit No.57 of 2006 on 31st August, 2010. The Lower Appellate Court has allowed Regular Civil Appeal No.87 of 2010 on 20th January, 2015. The Appellate Court has held that the plaintiff has established ownership over the suit property and therefore the defendant is directed to hand over the vacant possession of plot no.13

admeasuring 80 x 40 square meter in Survey No.3 situated at village Sagaon, Taluka Shirala, more particularly described in plaint paragraph (1).

2 It was the defence raised by the appellant-defendant that the suit was barred by limitation. The learned counsel for the appellants raises two questions before this Court that the suit is barred by limitation and it did not disclose the clause of action. The specific question was put to the learned counsel for the appellants as to which Article of the Limitation Act will govern the period of limitation for the suit in question. The leaned counsel for the appellants is unable to point out the provision which shall govern the limitation. The Appellate Court has held that Article 65 of the Limitation Act governs the suit. Apart from this, the question of limitation is a mixed question of law and fact which was neither raised before the trial Court nor before the Lower Appellate Court. The Lower Appellate Court had recorded the finding that the ownership has been established and therefore the plaintiff is held entitled to possession. No substantial question of law arises. Second Appeal is dismissed.

3 The cause of action shown in the plaint was of 16th March, 2006. The suit is filed in the year 2006. Hence, it cannot

be said that the suit was barred by limitation. In view of this, the decision of the Supreme Court in the case of ***Draupadi Devi Vs. Union of India***¹, does not apply.

4 The prayer for grant of stay to the order is rejected.

5 In view of the order passed in Second Appeal, Civil Application No.725 of 2015 does not survive and is disposed of accordingly.

(RAVI K. DESHPANDE, J.)

¹ 2004 (11) SCC 425.