

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6165 OF 2015

Ramakant Shivshankar Vaidya & Ors. .. Petitioners

*-Versus-*Late Mahadu Kamlu Patil @ Bhoir
(since deceased) through Lrs.

Smt. Vithabai Ganpat Yendrkar & Ors. .. Respondents

Mr.Mandar Limaye for petitioners

Mr.Raj Patel, i/b. Amit D. Kanani for respondent No.2.

CORAM : R.G.KETKAR, J.

DATE : 17th October 2015.

P.C.

1] Heard Mr.Limaye, learned Counsel for petitioners and Mr.Raj Patel, learned Counsel for the respondent No.2 at length.

2] Mr.Limaye states that the respondent No.2 is the only contesting respondent. He, therefore, seeks leave to delete rest of the respondent No.1.1 to 1.4 as they are legal heirs of the respondent No.1. Respondent No.1.1 to 1.4 have sold the property to respondent No.2. On the motion made by Mr. Limaye respondent Nos. 1.1 to 1.4 are deleted. Amendments shall be carried out

forthwith.

3] Rule. Mr. Patel waives service for respondents. At the request and by consent of parties, rule is made returnable forthwith and the petition is taken up for final hearing.

4] By this petition under Article 227 of the Constitution of India, the petitioners have challenged the judgement and order dated 6th June 2015 passed by the Learned President, Maharashtra Revenue Tribunal, Mumbai (for short M.R.T.) in Revision Application. By that order, the Tribunal dismissed the Revision Application, inter alia, on the ground that since the appeal preferred by the petitioners before the Sub-Divisional Officer, Thane (for short S.D.O.) was barred by limitation, no discussion on merits is required.

5] In support of this petition, Mr.Limaye submitted that proceedings under section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "Act") were initiated by heirs of respondent No.1 before the Agricultural Lands Tribunal (for short ALT) for fixing a purchase price in respect of land bearing Survey

No.61 (new) old S.No.67, Hissa No.3 admeasuring 60.8 Rs. situate at Waklan Dist. Thane (for short "suit land"). He submitted that the notices were issued by A.L.T. at the addresses of the petitioners where they were not staying. As a result thereof, the petitioners could not participate before the A.L.T.. Without hearing the petitioners and without ensuring whether the petitioners were served with the proceedings, the A.L.T. allowed the application on 5th November 2012.

6] Mr. Limaye submitted that as the notices were not served upon the petitioners, they were not aware of the proceedings and decisions rendered by the A.L.T.. He submitted that clause 5 of the operative part of the order of A.L.T. directed the office that the said decision shall be intimated to all the concerned parties.

7] He submitted that when the petitioners visited the office of Talathi on 13th December 2012, they acquired knowledge of passing of the order of 5th November 2012. On 13th December 2012 the petitioners applied for certified copy of the order which was obtained on 14th December 2012. The petitioners instituted the appeal on 28th

January 2013, which fact is born out from the order dated 8th January 2013 passed by the learned President of M.R.T. as also the reply filed by the opposite party. In that order, learned President observed that prima facie, the appeal was filed in time and the appeal was dismissed mainly on the ground of delay. The matter could, therefore, be disposed of finally after appearance of parties.

8] Mr.Limaye submitted that in para 8 of the impugned order, M.R.T. observed that the appeal was preferred on 4th February 2013, which is factually incorrect and contrary to the record. He further submitted that the M.R.T. dismissed the Revision Application on the ground that since the appeal preferred by the petitioners was barred by limitation, it was not necessary to discuss the merits of the case. He relied upon a decision of this Court in the case of Maruti Gade Vs. Dattatray Vishnu Maval reported in 1977 Mh.L.J. 848 .

9] On the other hand, Mr.Patel supported the impugned order. He submitted that basically the appeal preferred before the S.D.O was barred by limitation. Apart from that, no application for condonation of delay was made by the petitioners for condoning the

delay in filing the appeal. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the record. It is not disputed that the A.L.T. passed order on 5th November 2012. It is the petitioner's case that they acquired knowledge of that order on 13th December 2012 when they visited Talathi office. On the same day they made application for certified copy. The certified copy was received on 14th December 2012 and the appeal was preferred on 28th January 2013. In the say filed by the opposite party, the said fact was not disputed. The question is whether the appeal preferred by the petitioner before S.D.O was within limitation. A perusal of paragraphs 3 to 5 of the appeal memo shows that the petitioners asserted that after acquiring knowledge of the decision, the petitioners preferred the appeal which is within the limitation. In the case of Maruti Gade (supra), the Division Bench of this Court considered the decision in the case of Bhalchandra Parvatishankar Vs. Muljibhai Bhagabhai (1955) Special Civil Application No.1525 of 1955 decided on September 5, 1955, wherein it was held that "the words date of the order could properly be construed as the date from which the parties were fixed with the notice of the order". Reliance was also placed by the Division

Bench on the observations made by the Supreme Court in the case of Harishchandra Vs. Dy. L.A. Officer, A.I.R. 1961 S.C. 1500, which are to the following effect:-

“Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.”

As noted earlier, the petitioners have specifically asserted in paragraphs 3 to 5 of appeal memo that after acquiring knowledge of the decision of A.L.T., they have preferred appeal within limitation.

10] In view of the decision of this court in the case of Maruti Gade (supra) in my opinion, the M.R.T. with respect ought to have proceeded on the premise that appeal was within a period of limitation.

11] As noted earlier, the M.R.T. did not discuss the merits of the case on the ground that the appeal was barred by limitation. In view

thereof, the impugned order is liable to be set aside, thereby restoring the Revision Application. The M.R.T. will now decide the Revision Application on merits on the basis that the appeal was preferred before S.D.O. within time. It is made clear that I have not examined merits of the case and the contentions of parties on merits are expressly kept open. Petition is disposed of as under:-

- (i) The impugned order 6th June 2015 passed by the M.R.T. is quashed and set aside; Revision application is restored to file of the M.R.T.;
- (ii) The M.R.T. shall decide the Revision Application on its own merits on the premise that the appeal filed before the SDO was in time;
- (iii) Rule is made absolute in the above terms with no order as to costs;

(R.G.KETKAR, J.)