

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

SECOND APPEAL NO.640/2014

Smt. Parvatabai Ramchandra @
Chandu Gunjal & Anr.

... Appellants

V/s.

Shri Bhausaheb Sukdeo Gaikwad & Ors.

...Respondents

Mr. Sachin Gite for the Applicants.

CORAM: K.K. TATED, J.
DATED : AUGUST 31, 2015

P.C. :

1. Heard the learned counsel for the Appellants. This appeal is preferred by the Plaintiff challenging the judgment and decree dated 18/08/2005 passed by the Civil Judge, Junior Division, Yeola, Dist. Nasik in Regular Civil Suit No.103/2000 by which the Trial Court dismissed the Plaintiff's suit and the same was confirmed by the Appellate Court by decree dated 05/05/2014 in Regular Civil Appeal No.37/2006.

2. For the sake of convenience, the parties will be referred to as per their nomenclature in the suit i.e. Appellant as Plaintiff and Respondent as Defendant.

3. The learned counsel for the Plaintiff placed on record a photocopy of the paper book in Regular Civil Appeal No.37/2006

containing a copy of plaint, written statement, deposition of the parties and other documents.

4. Few facts of the matter are, as under:

The Plaintiff No.1's husband Ramchandra @ Chandu Gunjal executed sale deed dated 21/01/1992 in favour of Defendant No.1 in respect of the suit property i.e. portion of 80 R land out of gut No.29 situated at Chinchodi, Tq. Yeola, Dist. Nasik. Subsequently, Defendant No.1 sold the suit property by sale deed dated 18/06/1992 in favour of Defendant No.2. Similarly, Defendant No.2 executed sale deed dated 17/04/1995 in favour of Defendant No.3. Ramchandra, husband of Plaintiff expired on 27/05/1995. Defendant No.3 executed sale deed dated 24/06/1998 in respect of the suit property in favour of Defendant No.4. The Plaintiff filed suit No.23/1998 initially against Defendant No.3 only. That suit was withdrawn with liberty to file afresh. Thereafter the Plaintiff filed Special Civil Suit No. 11/1999 in the court of Civil Judge, Junior Division, Yeola, Dist. Nasik against subsequent purchasers of the suit property. In that suit, the Trial Court framed following issues:

	ISSUES	FINDINGS
1	Whether Plaintiffs prove that the suit land is the ancestral joint property of them and Defendant Nos.5 to 7 as alleged?	NO
2	If yes, what is the share of Plaintiffs in the suit land ?	Finding on issue No.1 is in the negative. This issue has become redundant, hence requires no findings.

3	Whether the the Plaintiffs prove that Plaintiff No.1's husband alienated the suit land to Defendant No.1 under the influence of drink without their consent and without consideration illegally as alleged ?	NO
4	Whether the Plaintiffs are entitled to the declaration sought for ?	NO
5	Whether the suit is within limitation ?	NO
6	Whether the Plaintiffs are entitled to the other reliefs sought for ?	NO
7	Whether Defendants prove that the suit is false to the knowledge of Plaintiffs ?	YES
8	If yes, what is the quantum of compensatory costs ?	Rs.2000/- each Defendant Nos.1 to 4.
9	What order and decree ?	As per final order.

5. The Trial Court, by decree dated 18/08/2005 dismissed the Plaintiff's suit.

6. Being aggrieved by the decree passed by the Trial Court, the Plaintiff preferred Regular Civil Appeal No.37/2006, wherein the Appellate Court framed following points for consideration:

	POINTS	FINDINGS
1	Whether the suit land was the joint family property of late Ramchandra, wherein the Plaintiffs had share ?	YES
2	Whether the sale deed dated 21/01/1992 of the suit land executed by late Ramchandra in favour of Defendant No.1 is bad in law ?	NO
3	Whether the suit was within limitation ?	NO

4	Whether the Plaintiffs had filed vexatious litigation by way of the suit ?	NO
5	Whether the decree passed in the suit by learned Judge, Yeola, requires interference relating to compensatory costs ?	Yes, partly relating to compensatory costs ?

7. The learned counsel for the Plaintiff submits that both the courts below failed to consider that the deceased Ramchandra had no right, title and interest to sell the suit property which was belonging to HUF. He further submits that even the courts below erred in coming to the conclusion that the deceased Ramchandra sold the suit property for legal necessity. He submits that even the Appellate Court erred in coming to the conclusion that the suit filed by the Plaintiff was beyond limitation. On this point, the learned counsel for the Plaintiff submits that the judgment and decree passed by both the courts below required to be set aside.

8. Heard the learned counsel for the Plaintiff at length. It is to be noted that in the present proceedings, admittedly, during life time of Ramchandra, Defendant No.1 executed sale deed dated 18/06/1992 in favour of Defendant No.2, thereafter, the Defendant No.2 in favour of Defendant No.3 on 17/04/1995. Neither the Plaintiff nor the deceased Ramchandra challenged those sale deeds. Subsequently, the suit property was transferred from Defendant No.3 to Defendant No.4. Though the Plaintiff learnt about the sale of the suit property by Late Ramchandra in July 1995, initially, they filed suit No.23/1998 against Defendant No.3 only. That suit was withdrawn by the Plaintiff to file a suit afresh. Thereafter, the Plaintiff filed the present proceedings. The Appellate Court rightly held that as per Article 59 of the Limitation Act,

same is required to be filed within 3 years. The Plaintiff had filed the first suit No.23/1998 only against Defendant No.3. Thereafter, the Plaintiff filed present suit challenging all 4 sale deeds. The present suit was filed by the Plaintiff on 11/01/1999. Considering this fact, the Appellate Court, rightly held that the suit filed by the Plaintiff was barred by limitation. Therefore, I do not find any substance in the submission made by the learned counsel for the Plaintiff that the Appellate Court erred in coming to the conclusion that the suit filed by the Plaintiff was barred by limitation.

9. It is to be noted that the Appellate Court specifically recorded that Late Ramchandra sold the suit property for repayment of loan amount taken by him from the cooperative bank. Those findings are on the basis of the evidence given by both the parties. Therefore, the findings of facts cannot be considered at the time of deciding the Second Appeal.

10. Considering the concurrent findings of facts of both the courts below, I do not find any substantial question of law in the Second Appeal. Hence, the Second Appeal stands rejected.

(K.K. TATED, J.)