

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

SECOND APPEAL NO.432 OF 2013
WITH
CIVIL APPLICATION NO.13 OF 2012
IN
SECOND APPEAL NO.432 OF 2013

1. Shri Rohan Ashok Mahankale, aged about 22 years, occ. Agriculturist residing at 935 Raviwar Peth, Pune-411 002
2. Shri Prafulla Rajendra Mahankale aged about 21 years, occ. Agriculturist residing at 919 Raviwar Peth, Pune-411 002
3. Kum. Swati Rajendra Mahankale aged about 20 years, occ. Student residing at 910 Raviwar Peth Pune-411 002.
4. Shri Kapil Shyam Mahankale, aged about, occ. Agriculturist residing at 935 Raviwar Peth Pune-411 002
5. Shri Rajendra Balkrishna Mahankale aged about 44 years. Occ. Agril. Residing at 919 Raviwar Peth Pune-411 002
6. Shri Ravindra Balkrishna Mahankale aged about 45 years, occ. Agriculturist residing at 919 Raviwar Peth Pune-411 002
7. Smt. Ranjana Dilp Gavali aged about 41 years, occ. Household work residing at 919 Raviwar Peth Pune-411 002
8. Shri Bhausahab Dhondiba Mahankale since deceased through his heirs and

legal representatives.

(a) Smt. Rajmati Bhausahab Mahankale
since deceased

(b) Shri Ashok Bhausahab Mahankale
aged about 49 years, occ. Agriculturist
residing at 935 Raviwar Peth
Pune-411 002

(c) Shri Shyam Bhausahab Mahankale
aged about 44 years, occ. Agriculturist
residing at 935 Raviwar Peth
Pune-411 002

(d) Shri Sanjay Bhausahab Mahankale
aged about 42 years. Occ. Agriculturist
residing at 935 Raviwar Peth
Pune-411 002

9. Shri Amol Ashok Mahankale, aged
about 25 years, occ. Agriculturist
residing at 935 Raviwar Peth,
Pune-411 002
10. Shri Atul Ashok Mahankale, aged
about 22 years, occ. Agriculturist
residing at 935, Raviwar Peth
Pune-411 002
11. Shri Somnath Dasharath Mahankale
since deceased through his heirs
and legal representatives
(a) Smt. Vijaya Somnath Mahankale
aged about 52 years, occ. Housewife
residing at 919 Raviwar Peth
Pune-411 002
(b) Shri Santosh Somnath Mahankale
aged about 32 years occ. Agriculturist
residing at 919 Raviwar Peth,
Pune-411 002
(c) Shri Sandeep Somnath Mahankale
aged about 27 years, occ. Agriculturist
residing at 919 Raviwar Peth
Pune-411 002
12. Ramnath Dasharath Mahankale,

deceased through his heirs and

L Rs

(a) Smt. Vasanti Ramnath Mahankale
aged about 47 years, occ. Household
work, residing at 919 Raviwar
Peth Pune-411 002

(b) Shri Mahesh Ramnath Mahankale
aged about 32 years, occ. Agriculturist
residing at 919 Raviwar Peth,
Pune-411 002

(c) Shri Girish Ramnath Mahankale
27 years, occ. Agriculturist
residing at 919 Raviwar Peth,
Pune-411 002

(d) Shri Ganesh Ramesh Mahankale
aged about 25 years, occ. Agriculturist
residing at 919 Raviwar Peth,
Pune-411 002

13. Shri Surendra Moghe, power of attorney
holder for Appellant Nos. 1 to 12 aged
about 54 years, occ. Consultancy
residing at 890 Sadashiv Peth,
Pune-411 030.

.. Appellants.
(Org. Plaintiffs.)

V/s

1. Pimpri Chincwad New Township
Development Authority, through
its Chief Officer, having its office
at PNCTDA Nigadi, Pune-411 044
2. The Special Land Acquisition
Officer No.3, Pune District Pune
3. Shri Ranu Appa Landge, since
deceased through his heirs and
legal representatives.

- A. Smt. Tarabai Ranu Landge-deceased
- B. Shri Maruti Ranu Landge-deceased
 - (a) Smt. Savitribai Maruti Landge, aged adult, occ. Household work
 - (b) Abhimanyu Maruti Landge, aged adult, occ. Household work
 - (c) Shivaji Maruti Landge, aged about occ. Agriculturist
- all residing at Landge Ali Gaothan
Mouje Bhosari Taluka Haveli
Dist. Pune.
- C. Shri Kaluram Ranu Landge, aged adult, occ. Agriculturist
- D. Shri Shamrao Ranu Landge, aged Adult, occ. Agriculturist
- E. Shri Rajendrababa Banu Lange
aged adult, occ. Agriculturist
all residing at Bhosari Dist. Pune
- F. Sou. Hirabai Vasant Balghare
aged adult, occ. household
deceased & heirs of Respondent No.3
i.e. respondent Nos.3a to 3e & 3g.
Residing at Chinchwali, Dist. Pune.
- G. Sou. Shantabai Babasaheb Nevale
aged adult, occ. Household
residing at Chikhali Taluka Haveli
Dist. Pune.
- 4. Shri shankar Amruta Landge since
deceased through his heirs and
L Rs.
 - A. Yeshwant shankar Lange aged adult. Deceased through legal heirs 4B and 4C.
Occ. Agriculturist
 - B. Shri Chhabu Shankar Landge,

aged, occ. Agriculturist
Both residing at Bhosari, Tal.
Haveli District Pune.

C. Smt. Suman Dattatraya Nakhate
aged adult, occ. Agriculturist
residing at Rahatnee Dist. Pune

5. Shri Soma Kalu Landge since
deceased through his heirs and
L Rs.

A. Shri Chintaman Soma Landge
aged adult, occ. Agriculturist

B. Shri Parshuram Soma Landge since
deceased through his heirs and
L Rs.

(a) Shri Bajirao Parshuram Landge
aged adult, occ. Agriculturist

(b) Shri Rajendra Parshuram Landge
aged Adult, occ. Agriculturist

(c) Shri Kalidas Parshuram Landge
aged adult, occ. Agriculturist
all residing at Bhosari Taluka Haveli
District. Pune.

C. Shri Bhagwant Soma Landge aged
adult, occ. Agriculturist

D. Shri Balu Soma Landge, aged adult
occ. Agriculturist
both residing at Bhosari Taluka
Haveli District. Pune.

E. Smt. Saubai Laxman Hagwane,
aged adult occ. Agriculturist
residing at Dehugaon, Dist. Pune

F. Dogambar Soma Lange aged
adult occ. Agriculturist

G. Smt. Anjana Ramdas Pathare
aged dult, occ. Agriculturist

- H. Smt. Anusaya Soma Landge
aged adult occ. Agriculturist
(deleted) All residing at
Bhosari Taluka Haveli
District Pune.
6. Shri Genu Raoji Landge, since
deceased through his heirs and
legal representatives
A. Shri Shivaji Genu Landge,
aged adult, occ. Agriculturist
B. Shri Dashrath Genu Landge
aged adult, occ. Agriculturist
C. Shri Dilip Genu Landge, aged
adult, occ. Agriculturist
All residing at Bhosari, Taluka
Haveli. Dist. Pune.
7. Smt. Sarubai Waman Landge,
since deceased through her heirs
and legal representatives.
7(1) Shri Baban Waman Landge
since deceased through his heirs
and legal representatives
(a) Shri Rajendra Baban Landge
aged adult, occ. Agriculturist
(b) Shri Vikas Baban Landge
aged adult. Occ. Agriculturist
(c) Shri Prakash Baban Landge.
Aged adult, occ. Agriculturist
All residing at Near Palika
Hospital Uday Mitramandal Chowk
Bhosari District. Pune.
(2) Shri Nivruti Waman Landge, aged
Adult, occ. Agriculturist
(3) Shri Subhash Waman Landge since
deceased through his heirs and
legal representatives.
(a) Sunil Subhash Landge aged
adult occ. Agriculturist

- (b) Shri Sandeep Subhash Landge
aged adult, occ. Agriculturist
- (c) Shri Sushil Subhash Landge
aged adult, occ. Agriculturist
- (4) Sou Janabai Rajaram Borane
aged adult, occ. Household work
- (5) Sou. Gajarabai Pundalik Bawale
aged adult, occ. Household work
All residing at Bhosari, Taluka
Haveli District. Pune.
- 8. Shri Jayawant Mahipati Landge since
deceased through his heirs and L Rs
No. 1 to 3 are already on record.
 - (1) Shri Lala Jayawant Landge
aged adult, occ. Agriculturist
 - (2) Shri Vitthal Jayawant Landge
since deceased through his heirs
and Legal Representatives.
 - (a) Smt. Indubai Vitthal Landge,
aged adult, occ. Household.
 - (b) Shri Suryakant alias Balasaheb
Vitthal Landge, aged adult
occ. Agriculturist
 - (c) Shri Chandrakant alias Appa
Vitthal Landge aged adult,
occ. Agriculturist,
since deceased, heirs already
on record 8a, 8b, 8d, 8e, 2 & 3.
 - (d) Shri Anil Vitthal Landge
aged adult, occ. Agriculturist
 - (e) Shri Vasudeo Vitthal Landge
aged adult occ. Agriculturist,
 - (f) Smt. Laxmi Nandu Phuge
aged adult. Occ. Agriculturist
Since deceased heirs already on
record 8a, 8b, 8d, 8e, 2 & 3
All residing at Gavhane Vasti
Bhosari Taluka Haveli
District. Pune.

- (3) Shri Shivaji Jaywant Landge,
aged adult. Occ. Agriculturist
residing at Bhosari Taluka Haveli
District Pune.
9. Smt. Rukhminibai Balkrishna Mahankale
aged about 66 years, occ. Household
residing at 919 Raviwar Peth,
Pune-411 002.

.. Respondents.
(Org. Defendants)

Mr. K.Y. Mandlik, for Appellants.
Mr. Vijay Patil, for Respondent No.1.

Coram : Smt. R.P. SondurBaldota, J.
Date : 11th March, 2015

P.C.

1. This Second Appeal challenges the concurrent findings of the Courts below in rejecting the plaint of the appellants under Order VII Rule 11 of the Code of Civil Procedure, on the ground that it is barred by the law of limitation.

2. In the year 2007, The appellants filed Regular Civil Suit No.251 of 2007 seeking declaration that they are owners of the suit property and that decree passed by the Civil Court in Civil Suit No.1168 of 1957 is not binding on them. They also sought permanent injunction to restrain the respondents from transferring the suit property to a third person. The respondents are the original

defendants to the suit. Respondents No.1 and 2 are the body acquiring the suit land, the acquisition in respect of which was completed on 31st August, 1986 and possession of the suit land taken and compensation to the extent of Rs.43,20,001/- paid to respondents No. 3 to 12(c). Original defendant No.4(a) and original defendants No.7(2), 3A to 3C, 4 and 5 filed the application under Order VII Rule 11 of the Code of Civil Procedure at Exhibits 144 and 54, respectively, contending that suit was barred by law of limitation and also that the appellants had not valued the suit properly.

3. It was contended by the appellants in their plaint that decree dated 25th October, 1962 passed in Regular Civil Suit No.1168 of 1957 had remained unexecuted for more than 12 years and as a consequence, it had become inexecutable. The decree in question holds that the transaction between the appellants and respondents No.3 to 12(c) was not of sale of the suit property but of mortgage, which mortgagee was redeemed. The appellants, claim that they have continued to be in possession of the suit property, despite the decree as respondents No.3 to 12(c) had never applied for execution of the decree seeking possession of the suit property. The Courts below found that the acquisition of the suit property had taken place

in the year 1986. The appellants admit the fact at para 8 of the plaint, by referring to the payment of compensation to respondents No.3 to 12(c). On the basis of the decree dated 25th October, 1962, respondent nos. 3 to 8 had got the revenue record changed to indicate that they are the owners of the suit property. According to the appellants, they learnt about the acquisition on 03rd November, 2006 first time and therefore, suit filed in the year 2007 was within time. At para 16 of the plaint, appellants state that decree in Regular Civil Suit No.1168 of 1957 had been challenged by them by preferring Civil Appeal No.371 of 1963 and thereafter by filing Civil Revision Application No.109 of 1965. But the same had been ultimately withdrawn by the appellants, though the plaint does not mention the date of withdrawal of the applications.

4. Considering the reliefs sought by the appellants in the plaint, it is obvious that in view of the acquisition in the year 1986, taking over of the possession of the suit property by the acquiring body and payment of compensation, nothing had remained for the decree-holders for execution of the decree. It stood executed on acquisition of the property by respondents No.1 & 2 and on receipt of compensation by the other respondents. Therefore, there is no

infirmity in the impugned order.

5. Mr. Mandlik, the learned advocate for the appellants sought to argue that Courts below erred in treating the question of limitation as a pure question of law when the question of limitation is always a mixed question of law and facts. This is not and cannot be an absolute preposition of law. The question of limitation is ordinarily a question of law. But it becomes a mixed question of law and facts depending upon the facts and circumstances of each case. If the facts required to be taken into consideration for deciding the question of limitation are disputed then it becomes the mixed question of law and facts. In any case, the Trial Court had given opportunity to the appellants to lead the evidence. The appellants ought to have taken that opportunity. Apart from that it is not even the case of the appellants that any specific facts relating to the question is disputed. Therefore, the Second Appeal is dismissed.

6. In view of dismissal of the Second Appeal, the Civil Application does not survive and the same is disposed of.

(Smt. R.P. SondurBaldota, J.)