

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.297 OF 2013

(Dalpatsinh Vallabhbha Parmar and others Vs. Surajben Bhikubhai Parmar and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

*Shri P.R. Arjunwadkar i/b Ms. Prabha Badadare, Advocate for Appellant.
Ms. Bhavna Anklesaria, Advocate for Respondent Nos.1 & 2.*

CORAM: R.K. DESHPANDE, J.

DATE: 15th JULY, 2015.

Regular Civil Suit No.01 of 2010 claiming share in the properties in the hands of the defendants and for partition and separate possession was dismissed by the trial court on 17.08.2012. Regular Civil Appeal No.03 of 2012 has been allowed by the Lower Appellate Court on 05.12.2013 and the suit filed by the plaintiff has been decreed for partition and separate possession.

Prima facie the factual position is that the property belonged to one Smt. Chandruben wd/o Vallabhai who died on 23.07.1984. The defendant Nos.1 to 3 are the sons and their names are entered into Mutation Entry No.682 dated 28.07.1983. The plaintiffs who are the descendants of Smt. Chandruben, filed the suit in question on 02.01.2010 claiming share in the property and for partition and separate possession. *Prima facie* plaintiffs came to know of mutation entry dated 28.07.1983, on 21.10.1984 when an application for cancellation of that mutation was filed by them with a prayer to include their names as the owners of the suit property. The proceedings were carried in appeal, which came to be dismissed on 27.11.2009. One of the questions before the courts was regarding bar of

limitation in filing the suit.

The trial court has held that the suit was barred by limitation and it was governed by Article 65 of the Limitation Act. The Lower Appellate Court has reversed this finding and it is held that the suit was within a period of limitation and it was governed by Article 65 of the Limitation Act.

Admit on the following substantial question of law.

Whether the limitation for filing the suit in question starts from the date of knowledge on 21.10.1994 or on the date of dismissal of appeal against the mutation entry dated 28.07.1983?

The learned counsel for the respondent waives service of notice.

Civil Application No.1082 of 2013:

Heard the learned counsel appearing for the parties. The substantial question of law has already been framed and the matter is already admitted. In view of this, the proceedings for partition may go on, but the possession of the property shall not be disturbed. The appellant shall not create any third party interests or part with possession of the suit property.

The civil application stands disposed of.

JUDGE