

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 440 of 2011

(Sakharam Vithoba Ambekar
since deceased through L.H
Namdeo Sakharam Ambekar Appellant

Versus

Smt. Janabai Yadav Kale
and ors Respondents)

Mr. M.M.Sathaye, Advocate for appellant.
Mr. Girish Agrawal, Advocate for Respondents 1 to 3

CORAM : R.K.Deshpande, J.
DATED : 24th JUNE, 2015.

P.C.

The trial Court passed a decree for partition and separate possession on 29.06.2006. The plaintiff is held entitled to one half share in the suit property and the declaration is granted that Gat No. 153, admeasuring 08R, be included in the share of the respondents while partitioning the agricultural land. Civil Appeal No. 162 of 2006 preferred by the defendants has been dismissed by the lower appellate Court on 23.03.2011. Hence, the defendant Nos. 2 and 3 are before this Court in this second appeal.

The defence was raised in the written statement that it is a case of ouster of the plaintiff and the reliance was placed on Article 110 of the

Limitation Act to urge that the suit was barred by limitation.

Both the courts below have recorded the finding that the suit was within a period of limitation for the reason that the notice claiming the share on partition was issued in the year 1995 and the suit was filed in the year 1998. The basic defence raised by the appellant-defendant is that the property was already partitioned when the common ancestor Vithoba was alive. This theory has been rejected by both the Courts below. The said finding is not under challenge. The trial Court also framed an issue as to whether the defendant No.1 has established that he has perfected the title over the suit property by way of adverse possession. The said issue has been answered in the negative. The appellate Court has considered the aspect of 'exclusion' in the light of Article 110 of the Limitation Act. In para 23, the court has held that there is no ouster. The property was ancestral property and hence the question of adverse possession or exclusion remains the question of fact, which is decided by both the courts below. There is no substantial question of law arises for consideration, the second appeal is dismissed.

(R.K.DESHPANDE, J.)