

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Second Appeal No.73/2015

**(Smt. Meena Wasudeo Talwekar .vs. Sheikh Ayyub Sheikh Moharam since
deceased through his L.Rs. And ors.)**

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

Court's or Judge's orders.

Mr. M.P. Khajanchi, Advocate with Mr. M.I. Dhatrak, Advocate for
Appellant.
Mr. K. R. Lule, Advocate for Respondent no.4.

CORAM : A.V. Nirgude, J.
DATED : MAY 06, 2015.

Heard.

2. The facts leading to this litigation in short can
be stated as under:-

One Pandurang was married one Shantabai
from whom he was blessed with three children Tara,
Shilprabha and Ramesh. Shantabai died in 1949.
Thereafter Pandurang married Sushilabai from whom he
was blessed with one daughter Meena who is the
appellant herein. Pandurang during his life time in 1956,
effected partition of ancestral property. He even allotted
small shares to his daughters Tara, Shilprabha and
Meena. Most of the properties were given to Ramesh,
his only son and his wife Sushilabai. Pandurang died in
1959. Sushilabai and Meena filed a suit alleging that
they were not given proper share and the partition
effected by Pandurang was inequitable. This litigation
continued till 1971. Ultimately it ended in compromise.

The High Court delivered judgment regarding such compromise.

3. It so happened that land Kh. No.39 to the extent of 4.27 acres was earlier allotted to Meena was taken back and was given to Ramesh. This land is the subject matter of this litigation.

4. In 1971 and before that one Moharam was claiming tenancy in respect of the suit land. He made several attempts to get himself declared as tenant but ultimately he lost the litigation in 1997. It is thereafter Meena filed this suit claiming declaration of ownership of the suit land and for possession against Moharam's legal representatives who were then cultivating the land. Soon thereafter Ramesh sought permission to get himself impleaded in this suit and was allowed to do so. He set up a counter claim in which he sought declaration against Meena and others that he is the owner of the suit land and he is entitled to possession. The Courts below on facts held that Ramesh is owner of the suit land and is entitled to possession also. As against this concurrent finding recorded by the Courts below, Meena filed this appeal.

5. The learned counsel for the appellant mainly raised two points. First he said that the counter claim of Ramesh was not maintainable as mainly Ramesh was not necessary or proper party to this litigation. The second point he raised was that limitation for the counter claim had expired long back. Indeed Ramesh

could not have been impleaded as defendant in this litigation. Even though, he ultimately proved his title. For him this litigation was not relevant at all. This was a litigation between Meena and the cultivators of the suit land who ultimately could not prove their proprietary concern to the suit land. If at all Ramesh wanted declaration of ownership, he ought to have filed a separate suit against Meena and others. Instead of taking such step which was then necessary, he applied to the Court and the Courts permitted him to get himself impleaded in this suit as one of the defendants. Indeed this was not quite proper. However, this objection raised at such a belated stage would not give rise to a substantial question of law. As said above, whether Ramesh was necessary or proper party could be a question of law. But I do not think that for deciding such a question, the appeal should be admitted. My reason is as under:-

Had Ramesh's application to get himself impleaded as defendant in this suit been rejected, he would have certainly filed a separate suit. Such a suit would have certainly been tried along with this suit. The main question in such suit would have been whether the suit land belonged to Ramesh or Meena. Similar question arose in the counter claim filed in this case. The parties led evidence for getting finding on this question. Elaborate trial took place and ultimately a finding is recorded on facts that Ramesh is the owner of the suit land. After so much of development, it will not be proper for me to relegate the parties back to another litigation. In view of this difficulty, I am not inclined to

hold that the question raised by the appellant is substantial question of law.

6. The second point is whether the counter claim was within limitation? The Courts below held that the counter claim was within limitation because the cause of action for the counter claim arose only in 1997. Prior to that the occupier was litigating claiming tenancy. The learned counsel for the appellant tried to read out the pleadings in the counter claim. He suggested that the counter claim ought to have mentioned as to when the cause of action arose etc. In any case Ramesh's counter claim could not have been filed prior to 1997 because the occupier of the land was litigating on the basis of tenancy. As long as he claimed tenancy, his possession was not adverse to the owner.

7. In view of this, the appeal does not give rise to any substantial question of law. Dismissed.

JUDGE

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