

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

19 SECOND APPEAL NO. 165 OF 2013

SHAMSHODDIN SARDARODDIN
VERSUS
LIMBA EKNATH FAWADE, DIED THR. L.RS. VILAS AND ORS

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Advocate for Appellant : Kazi S.S.

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CORAM : T.V. NALAWADE, J.
DATED : 22nd March, 2016.

ORDER :

1. The appeal is filed by one of the plaintiffs of Regular Civil Suit No. 143/2002 (old No. 186/2000), which was pending in the Court of Civil Judge, Junior Division, Kille-Dharur and also against the judgment and decree of Regular Civil Appeal No. 171/2004, which was pending in the Court of District Judge-1, Majalgaon, District Beed. Both the sides are heard.

2. The suit was filed for relief of declaration of ownership, partition and separate possession of the shares of plaintiffs. It is the contention of the plaintiffs that one Tamijoddin was their grandfather and Tamijoddin had left behind three sons by name Sharifoddin, Sardaroddin and Ahmad Mayoddin (defendant No. 14). Sharifoddin is dead and defendant No. 13 is son of Sharifoddin. Sardaroddin is also dead and plaintiffs are his

successors, sons.

3. It is the case of plaintiffs that their grandfather Tamijoddin had left behind agricultural land bearing Survey No. 564, admeasuring 34 Acres 6 Gunta situated at Kasba Dharur. It is contended that in view of the relationship of plaintiffs with the grandfather and the circumstance that only three sons were left behind by Tamijoddin, plaintiffs are entitled to get 1/3rd share in the property left behind by Tamijoddin. It is contended that as the father of plaintiffs and father of defendant No. 13 died before 1952, defendant No. 14 started managing the property and he was cultivating the land for all the successors of Tamijoddin. It is contended that defendant No. 14 was giving crop share to the plaintiffs and so, for some time, there was no dispute.

4. It is the case of plaintiffs that on 6.1.1959 defendant No. 14 sold 1/6th portion under two different sale deeds to Ekanth Gangaram Fawade and Sangappa Vithoba Lonari. Defendant Nos. 15 and 16 are successors of those purchasers.

5. It is the case of plaintiffs that defendant Nos. 1 to 12 and 15 and 16 have got effected mutation in the revenue record in respect of the suit property and they are now shown as

owners of the suit property. It is contended that the transaction, if any, made by anybody like defendant Nos. 13 and 14 are not bidding on them and they are entitled to equal share in the suit property.

6. Defendant No. 14 did not appear in the suit and ex parte order was made against him. The suit was abated as against defendant No. 13 as his legal heirs were not brought on the record.

7. Defendant Nos. 1 to 12, 15 and 16 filed joint written statement. They admitted the relationship, but they denied the other contentions that the suit property was owned by Tamijoddin. They admitted that defendant No. 14 had sold some property in the year 1959, but they denied that the property was inherited by these defendants from Tamijoddin. It is the case of defendants that the suit property was Inam land, but Inam was abolished under Inam Abolition Act, 1954 and the Government had taken the land in its possession. It is contended that the Government sold the suit land to father of defendant Nos. 1, 2 and 9 in the year 1960 by holding auction under the provisions of Inam Abolition Act, 1954. It is contended that these defendants purchased the land from Government after making

payment of consideration fixed in the auction and accordingly, the mutations were made in their favour. It is contended that in view of these circumstances and the dates of transaction, the suit is not within limitation.

8. Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. The record like sale deeds executed in favour of defendants were produced and the record of mutation in support of aforesaid contentions made by the defendants was also produced. The Trial Court has held that it was not ancestral property of defendant No. 14 and plaintiffs have no right or interest in the suit property. The First Appellate Court has held that the suit was not within limitation.

9. Exh. 30 produced by defendants show that in the year 1959 Inam was abolished and in the year 1960 Government had taken over the possession of the land as per the provisions of Hyderabad Abolition Inams and Cash Grants Act, 1955. This record further shows that Government had then given possession of this land to Ekanth Fawade and others as per the provisions of the said Act and consideration was accepted from them. Their names were then entered in the revenue record. There is the record to show that in the year 1954-55 this land

was shown as *Madatmas* Inam and the record of abolition is consistent with old record. This record was not challenged by the plaintiffs. In the oral evidence, they have contended that they do not know about such mutation. This contention is not acceptable as the revenue record was changed in the year 1960 itself. Thus predecessors in title of plaintiffs and the predecessors in title of some of the defendants virtually lost their rights prior to year 1960 and as per the revenue record, they had no concern with these lands after the aforesaid actions taken by Government. Rights are given to defendant Nos. 1 to 12, 15 and 16 and there are conditions imposed on them as per the provisions of Inam Abolition Act. The suit came to be filed in the year 2000 and so, in view of the provision of section 27 of the Limitation Act, it can be said that whatever right plaintiffs were having had come to an end prior to the date of the suit.

10. In view of the nature of claim made in the suit, the aforesaid circumstances and the provisions of Inam Abolition Act, no relief could have been granted by the Courts below to the plaintiffs. Thus, no error is committed by the Courts below in deciding the matter against the plaintiffs and no substantial question of law as such is involved in the matter.

11. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/