

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

SECOND APPEAL NO.465 OF 2012

1.Shri Kshetra Mahableshwar Devasthan)

Trust, Kshetra Mahableshwar,)

Registered Office 139, Dr.Sabne Road)

Mahableshwar, Taluka Mahableshwar)

District-Satara, Through its Trustees-)

1. District and Sessions Judge, Satara,)

Ex-officio Trustee and President of)

the Trust.)

2. Sub-Divisional Officer)

Mahableshwar)

Sub-Division, Wai-Ex-officio,)

Trustee-Sarpanch of the Trust)

3. Tahsildar, Mahableshwar,)

Ex-officio, Trustee-Administrative)

Trustee of the plaintiff Trust.)

4. President, Nagar Parishad)

Mahableshwar)

Ex-officio Trustee of plaintiff Trust.)

5. Narayan Sidu Pophale)

age-62,Occupation-Advocate,R/o.1335)

Raviwar Peth, Wai, District-Satara.)

6. Bhagwandas Damodardas Shah)

Occupation-Business, R/o. Wai,)

(change of the trustee))

7. Anil Ramchandra Dhanawade)

Occupation-Service, Kshetra)

Mahableshwar.)

(change of the trustee))

.. Appellants
(Original Plaintiffs)

Versus

1. Government of Maharashtra)
through the Collector, Satara,)

2. Divisional Forest Officer, Satara)

3. Range Forest Officer, Mahableshwar)
Taluka Mahableshwar, District-Satara,)

.. Respondents
(Original Defendants)

Mr.Vijay Killedar for the appellants.

Mr.A.R.Patil, AGP for the respondents.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 10th February 2016

PRONOUNCED ON : 22nd March 2016

Judgment :-

1. By this second appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellants (original plaintiffs) have impugned the order and judgment dated 22nd September 2011 passed by the learned District Judge-1, Satara dismissing the appeal filed by the appellants and confirming the decree passed by the learned trial Judge in a suit filed by the appellants against the respondents (original defendants) praying for submission of the accounts of the profits earned from the suit properties from 24th August 1943 till the date of the suit and for an order and decree against the defendants to pay 50% of the amount of profits earned and realised by the defendants from 24th August 1943 till the date of filing the suit with a minimum of Rs.45,000/- and for various other reliefs.

2. By an order dated 29th September 2014 passed by this Court, it was directed that this second appeal deserves to be heard finally at the

admission stage. For the sake of convenience, the parties to the present proceedings are described as they were described in the proceedings before the learned trial Judge, in the later part of the judgment. Some of the relevant facts for the purpose of deciding this second appeal are as under :-

3. Shri Kshetra Mahableshwar Devasthan-Trust (plaintiff no.1) is a religious trust registered under the Bombay Public Trust Act, 1950. The other plaintiffs were the office bearers and trustees of the said trust. It was the case of the plaintiffs that the plaintiff no.1 was the owner of the suit properties which are described as under :-

(A)	Old S. Nos.	Area
	52	90 A 9 G
	New S. Nos.	
	77/1	32 H 48 R
	77/2	0 H 30 R
	56/1	3 H 16 R
	55	0 H 46 R
	54	0 H 81 R
(B)	Old S. No.	
	65	76 acres
	New S. No.	
	90	31 H 15 R

4. It was the case of the plaintiffs that the plaintiff no.1 had given the suit properties on lease to the Government of Maharashtra (formerly Bombay State) vide registered lease deed dated 24th August 1943. The said lease deed was executed and signed by the Collector of

Satara for and on behalf of the State of Maharashtra. Under the terms and conditions of the said agreement, the defendants had agreed to pay 4 Annas per acre per year as rent to the plaintiff no-1-Trust and also to pay 50% of the profits realized and earned from the suit properties to the plaintiff no.1-Trust after every 10 years. It was the case of the plaintiffs that the defendants were utilizing and using the suit properties for commercial and non-forest purposes and were earning and realizing huge amounts of profits from the suit properties. The suit property was rocky and barren and there was hardly any forest on the suit properties. According to the plaintiffs, the major portion of the suit properties was and is being used by the defendants for commercial shopping and vehicle parking etc. in respect of which the defendants are charging huge amounts of license fees.

5. The plaintiffs had issued a notice on 14th January, 1994 through its advocate to the defendants calling upon the defendants to give the details and accounts of the profit of the suit property earned by the defendants and also demanded the arrears of rent and share of profit. The defendants vide their reply dated 16th February, 1994 refused to comply with the said notice dated 14th January, 1994. The plaintiffs thereafter issued a notice on 12th October, 1995 under section 80 of the Code of Civil Procedure to the defendants. The defendants' replied to the said notice vide letter dated 4th November, 1995 and refused to comply with the demand of the plaintiffs. In the reply given by the defendants, the defendants had alleged that the suit properties were vested in the defendant no.1 under the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975. The defendant no.1 got its name recorded in the

revenue record of the suit properties which were disputed by the plaintiffs. It was the case of the plaintiffs that the relationship of the landlord and tenants still continued and the said lease deed dated 24th August, 1943, entered into between the plaintiff no.1 and defendants was in force and was binding on the defendants.

6. On 22nd August, 1996, the plaintiffs filed Regular Civil Suit No. 334 of 1994 against the defendants in the Court of Civil Judge, Senior Division, Satara inter alia praying for payment of arrears of rent and share in the profit and also prayed for disclosure of the account of the profit.

7. On 28th September, 2004, the defendant nos. 1 to 3 filed a written statement disputing the claims made by the plaintiffs. In the said written statement, the defendant nos. 1 to 3 contended that since the suit properties were vested in them under the provisions of Maharashtra Private Forests (Acquisition) Act, 1975, the plaintiffs had no right, title or interest in the suit property.

8. The learned trial judge framed eight issues including whether the defendants had proved that in view of the Maharashtra Private Forests (Acquisition) Act, 1975, the defendants had ceased to be the owners of the suit properties and whether the agreement of lease entered into between the parties came to an end in view of the said Act. The learned trial judge also framed an issue of limitation. Both the parties led oral evidence before the trial court. Insofar as the issue whether the plaintiff no.1 trust has ceased to be the owners of the suit properties or

not and whether the said agreement of lease came to an end in view of the said Act is concerned, the learned trial judge rendered a finding in affirmative and held that the plaintiffs had ceased to be the owner of the suit property and the agreement of lease came to an end in view of the provisions of the said Maharashtra Private Forests (Acquisition) Act, 1975. The learned trial judge also rendered a finding that the suit filed by the plaintiffs was not within the limitation.

9. Being aggrieved by the said judgment and decree dated 30th November, 2006, the plaintiffs herein filed a Regular Civil Appeal No.108 of 2007 on 3rd April, 2007 in the Court of learned District Judge, Satara. By an order and judgment dated 27th September, 2011, the learned District Judge, Satara dismissed the said regular civil appeal filed by the plaintiffs holding that the suit property fell within the ambit of the definition of the 'private forest' under the Act and the defendants had acquired the said land under the said Act. This order and judgment of the lower appellate court delivered on 27th September, 2011 has been impugned by the plaintiffs in this second appeal.

10. Mr.Killedar, learned counsel appearing for the appellants invited my attention to the provisions of the agreement for lease and also the pleadings filed and the evidence led by the parties. My attention is also invited to some of the findings recorded by the two courts below. He submits that in the suit for recovery of rent and profits, the learned trial judge could not have decided the issue of title. There was no counter claim filed by the defendants inter alia praying for a declaration that by virtue of the provisions of the said Act, the plaintiff no.1 had ceased to be

the owner of the said property and the same vested in the State Government. Without prejudice to his aforesaid submission, learned counsel invited my attention to the provisions of section 2(ci) and 2(f) of the Maharashtra Private Forests (Acquisition) Act, 1975 and also to the provisions of the Indian Forests Act, 1927. He submits that none of the conditions under 2(f) of the Maharashtra Private Forests (Acquisition) Act, 1975 were satisfied. No notifications were issued by the State Government under the provisions of the said Act. He submits that since the land given on lease by the plaintiffs was a barren land, the land could never be considered as a forest within the meaning of section 2(ci) and 2(f) of the said Act Maharashtra Private Forests (Acquisition) Act, 1975. Reliance is also placed on section 3 of the said Act of 1975. He submits that there is no automatic vesting of the land under the provisions of the Act of 1975. In support of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of ***Godrej & Boyce Mfg.Co.Ltd. & Anr. vs. The State of Maharashtra & Ors.*** and other connected matters, reported in ***AIR 2014 SC 1446*** and more particularly paragraphs 25, 30, 52 and 73. He submits that the judgment of Supreme Court in case of *Godrej & Boyce Mfg.Co.Ltd. & Anr. (supra)* squarely applies to the facts of this case.

11. It is submitted by the learned counsel that admittedly after 1927, the State Government has not issued any notification declaring the land of the plaintiffs as private forest and thus there could not be any automatic vesting of the said land in the Government. He submits that even a stale notice or notice in pipeline is not sufficient under the definition of the private forest as contemplated under section 3 of the said

Act of 1975. He submits that the large number of shopping complex, resorts etc. are already constructed on the said plot of land given on lease by the plaintiff no.1 to the State Government and the same could never be described as forest within the meaning of section 2(ci) or 2(f) of the said Act.

12. Insofar as issue of limitation is concerned, it is submitted by the learned counsel for the plaintiffs that though there was a finding recorded by the lower appellate court that entire claims made by the plaintiffs were not barred by law of limitation, no relief came to be granted by the lower appellate court even to the extent of the claims being within time. He submits that admittedly, the defendants did not file any second appeal against the said findings rendered by the lower appellate court on the issue of limitation to the effect that the entire claims made by the plaintiffs were not barred by law of limitation.

13. Mr.Patil, learned AGP for the defendants, on the other hand, submits that admittedly, the plaintiffs had not sought a declaration that the suit land was not a private forest. In support of this submission, he invited my attention to the prayers in the plaint filed by the plaintiffs. He submits that the only relief claimed by the plaintiffs was for recovery of the rent, for furnishing of accounts and for sharing of profit. He submits that no evidence was led by the plaintiffs on the issue of arrears of rent. He submits that under the provisions of agreement for lease entered into between the parties, the State Government had agreed to pay 4 anna and 50% share in the profit after expiry of every 10 years. He submits that admittedly since 1975, the State Government had stopped paying any rent

and also furnished accounts to the plaintiffs. No grievance of any nature whatsoever was raised by the plaintiffs against the State Government till 2006 i.e. for a period of 21 years. He submits that the notice under section 80 of the Code of Civil Procedure, 1908 was issued for the first time on 20th October, 1995. The claims made by the plaintiffs were therefore barred by law of limitation. He submits that even if the findings rendered by the lower appellate court on the issue of limitation is considered, the suit was ex-facie barred by law of limitation for the cause of action which had arisen prior to the 10 years of the plaintiffs' filing the said suit for recovery of rent and profit.

14. Insofar as issue whether the said suit plot did vest in the Government or not, the learned A.G.P. placed reliance on the notification and more particularly in respect of old survey nos. 52 and 65 of the Mahabaleshwar. He submits that since the notification was already issued under the provisions of Indian Forests Act, 1975, there was no question of issuing any fresh notice by the State Government. He submits that the judgment of Supreme Court in case of *Godrej & Boyce Mfg.Co.Ltd. & Anr. (supra)* is thus not applicable to the facts of this case.

15. It is submitted that under the said notification referred to aforesaid, part of the plot bearing survey nos.52 and 65 admeasuring 90 acre and 80 acre were de-forested. He submits that when the lease deed was executed by and between the parties in the year 1943, the suit plot was already a forest and was vested in the Government and thus even the said lease deed could not have been executed with the Government. It is submitted that the question of recovery of any rent or profit from the Government did not arise.

16. It is submitted that once the land was already a forest, after appointed date, it had vested in the Government and thus no fresh notice under section 26 of the Indian Forests Act was thus necessary. It is submitted that after enactment of the said Act of 1975, the property of the plaintiffs ceased to be the property of the plaintiffs and vested in the Government. He submits that the definition of private forest under section 2(f) is inclusive definition and the condition of the said provisions were duly satisfied.

17. Lastly it is submitted by the learned A.G.P. that the plaintiffs have already filed a separate suit in respect of the title of the suit property and for possession and thus issue of title and possession in respect of the suit property can be considered in the said suit.

18. Though the two Courts below have considered the issue as to whether the defendants had proved that in view of the Maharashtra Private Forests (Acquisition) Act, 1975, the defendants have ceased to be the owners of the suit properties or not though no such declaration was sought by the defendants by filing a separate counter-claim, it is a common ground and the grievance of both the parties that no such issue could have been decided by the Courts below. It is also submission of both the learned counsel for the parties that since the plaintiffs herein have now already filed a separate suit for possession and for declaration of title in respect of the suit property, the issue of title in respect of the suit property can be considered in the said suit filed by the plaintiffs (appellants herein). In view of this submission made by both the parties, this Court need not go into the issue of title as the same will have to be

decided by the civil suit filed by the plaintiffs for possession and declaration of title keeping the said issue open which can be agitated by both the parties in the pending suit filed by the plaintiffs. It is, therefore, made clear that the findings recorded by the two Courts below on the issue of title will not be binding on any of the parties or the trial Court.

19. The only issue which now remains for consideration of this Court is whether money claim made by the plaintiffs before the learned trial Judge for recovery of arrears of rent and profits was within a period of limitation or not. A perusal of the order passed by the learned trial Judge indicates that the learned trial Judge in paragraph 29 of the impugned judgment has held that if the defendants were to pay 50% amount of profits after every 10 years, the cause of action could be said to have been arisen after the expiry of 10 years if the defendants had not paid the profits to the plaintiffs. It is held that the plaintiffs either ought to have claimed the accounts after the expiry of 10 years or within 3 years from the year 1975 and had accordingly dismissed the entire suit on the ground of limitation.

20. A perusal of the order passed by the Lower Appellate Court on the issue of limitation indicates that though it is held that by no stretch of imagination, it could be said that the entire claim made by the plaintiffs was barred by law of limitation, the Lower Appellate Court has dismissed the appeal filed by the plaintiffs in entirety. In my view, the orders passed by the learned trial Judge and by the Lower Appellate Court on the issue of limitation in respect of money claim made by the plaintiffs are ex facie erroneous. The question framed by the Court is answered

accordingly. In my view, the learned trial Judge as well as the Lower Appellate Court thus could not have dismissed the entire suit in so far as the issue of limitation is concerned. The orders passed by the learned trial Judge as well as the Lower Appellate Court on the issue of limitation thus deserve to be set aside and the matter is required to be remanded back to the learned trial Judge for rendering a decision on the issue of limitation afresh and in accordance with law.

21. I therefore pass the following order :-

- a) The order dated 22nd September 2011 passed by the Lower Appellate Court in Regular Civil Appeal No.108 of 2007 filed by the plaintiffs and the judgment and decree dated 30th November 2006 passed by the Civil Judge, Senior Division, Satara in Regular Civil Suit No.334 of 1996 below Exhibit-60 are set aside on the issue of limitation;
- b) The findings recorded by the Lower Appellate Court as well as the learned trial Judge on the issue of title in respect of suit properties would not be binding on the parties and also the Civil Court in the pending suit filed by the plaintiffs for declaration of title and possession;
- c) Regular Civil Suit No.334 of 1996 filed by the plaintiffs before the Civil Judge, Senior Division, Satara below Exhibit-60 is restored to file in so far as the claim made by the plaintiffs and the issue of limitation raised by the defendants in respect of such money claim is concerned;
- d) Learned trial Judge shall consider the money claim and also issue of limitation afresh without being influenced by the observations

and findings recorded by the learned trial Judge in the impugned judgment and decree and also the order passed by the Lower Appellate Court and shall decide the matter in accordance with law expeditiously;

- e) If the parties desire to lead any oral evidence on the issue of limitation, the learned trial Judge shall permit the parties to lead such oral evidence;
- f) Second Appeal No.465 of 2012 is disposed of in aforesaid terms;
- g) There shall be no order as to costs.

R.D. DHANUKA, J.