

Sequeira

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

**SECOND APPEAL NO. 127 OF 2015
Along with
CIVIL APPLICATION NO. 246 OF 2015
And
CIVIL APPLICATION NO. 711 OF 2015**

Shri Kisan Bajaba Bangar
since deceased- & ors.

.. Appellants / Applicants

Versus.

Shri Namdeo Bajaba Bangar.

.. Respondent

Mr.Bhavesh Parmar i/b Mr.Devmani Shukla and Mr.V.Yadav, for
Appellants / Applicants in both C.A.
Mr.G.S.Godbole a/w Mr.S.A.Sawant and Mr.Samir Suryawanshi,
for the Respondent.

**CORAM: N.M. JAMDAR, J.
Wednesday, 30 March 2016.**

Oral Order :

The Appellants challenge the concurrent decisions of the Civil Judge, Junior division, Ghodegaon and the District Judge Pune, decreeing the suit filed by the Respondent and dismissing the Appeal filed by the Appellants.

2. The suit was filed by the Respondent for a declaration that the sale deeds in question were illegal and not binding on the part of the Respondent and that Respondent was entitled 5/16th share

in the suit property. Both the Civil Judge and the District Judge came to the conclusion that the suit properties were joint family properties and the Appellant failed to show that the properties were self-acquired properties of one Bajaba through whom the Appellants are claiming.

3. The learned counsel for the Appellants submitted that suit is not within limitation as the suit challenging sale deeds of 1979 is filed in the year 1996. The learned counsel for the Respondent has drawn my attention to the pleading in the plaint where it is stated that when the Respondent asked the Appellants for partition, after the death of Bajaba, the Appellants informed them that the properties in question have already been sold and thereafter the suits have been filed. Both the Courts have accepted this version. Both the Courts have also considered that the suit was filed within 12 years from denial of rights to the joint family property. Therefore, the contention that the suit was barred by limitation cannot be considered.

4. The learned counsel for the Appellants then submitted that the Appellants had filed an application below Exhibit 18A for bringing certain agreements on record and without considering these documents, the learned District Judge has dismissed the Appeal. I have considered the submissions. The learned District Judge has in fact referred to the application below Exhibit 18A and the sale deeds. The learned District Judge however has observed that since the Appellant Bajaba failed to prove that Bajaba had any independent source of income from which he could have

purchased the property, nothing much turns on these documents. This approach is correct. Both the Courts have rendered a finding of fact that there was a nucleus available with the joint family and that the burden had shifted on the Appellants to show that Bajaba had sufficient funds to purchase that property. Once that position is established, even if these sale deeds were brought on record, the question would still arise regarding independent source of income which the Appellants failed to demonstrate. Therefore, this submission also cannot be accepted. Since the burden was on the Appellants to show that the properties were self-acquired properties, which burden the Appellants failed to discharge, no question of law arises. The Appeal therefore, cannot be entertained and is accordingly dismissed.

5. At this stage, learned counsel for the Appellants seeks continuation of the interim order. Accordingly, it is directed that the partition proceedings to go on however, physical possession will not be delivered for a period of four weeks from today. The Appellants will also not create third party rights in the suit property.

6. In view of the above, both the Civil Applications stand disposed of.

(*N.M. JAMDAR, J.*)