

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.449 of 2014

[Kamlakar s/o Parasram Pise and others v. Bandu s/o Bhojraj @ Bhojiya Bangde
(Bangadkar) and others]

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

Court's or Judge's orders

Shri S.S. Sirsat, Advocate for Appellants.
Shri A.M. Ghare, Advocate for Respondent No.12.

Coram : R.K. Deshpande, J.

Date : 20th June, 2016

The Trial Court passed a decree for partition and separate possession, which has been confirmed in appeal by the lower Appellate Court. Hence, the original defendants are before this Court in this second appeal.

Two points are raised by the learned counsel for the appellants – one is that the Courts below ought to have dismissed the suit barred by the law of limitation, and another is that the suit was barred by the principle of res judicata.

The learned counsel for the appellants does not dispute that the period of limitation prescribed for filing a suit for partition and separate possession is of 12 years and it shall start operating from the date when the plaintiffs are denied the share in the suit property. There is nothing on record to show that at any earlier point of time, the plaintiffs had demanded the share, which was refused to them.

The bar of limitation does not at all arise. So far as the question of res judicata is concerned, the plaintiffs were not parties to the earlier civil suit and hence the bar of res judicata also does not operate.

No substantial question of law is involved in this second appeal, which is dismissed.

Judge.

Lanjewar