

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.488 OF 1998

1. Chatur Khandu Patil,
Age : 40 years, Occ. Agri.,
r/o. Mohide Turf Shahade,
Tq. Shahada, Dist. Dhule
- ②. Yuvraj Khandu Patil,
Age : 35 years, Occ. Agri.,
r/o. Mohide Turf Shahade,
Tq. Shahada, Dist. Dhule
..Abated as
As per order
dt.20.03.2013
3. Ratilal Khandu Patil,
Age : 28 years, Occ. Agri.,
r/o. Mohide Turf Shahade,
Tq. Shahada, Dist. Dhule
4. Sumanbai w/o. Onkar Patil,
Age : 30 years, Occ. Household,
residint at Shinde,
Tq. Nandurbar, Dist. Dhule
5. Ijabai w/o. Chunilal Patil,
Age : 26 years,
Occ. Household work,
r/o. At Bahuri Sawal,
Tq. Sagbara,
Dist. Bhadocha (Gujarat)
..Appellants

Vs.

Somaji Chhagan Patil,
Age : 40 years,
Occ. Agri.
r/o. at Mohide Turf Shahade,
Tq. Shahade, Dist. Dhule
..Respondent

Mr.N.L.Jadhav, Advocate for appellant (appointed)

Mr.S.P.Shah, Advocate i/b. Mr.P.M.Shah, Senior
Advocate for respondent

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CORAM : SANGITRAO S. PATIL, J.

DATE : AUGUST 01, 2017

ORAL JUDGMENT :

The appellants, who are the legal heirs of the original plaintiff namely, Khandu Madan Patil have preferred this Second Appeal against the judgment and decree dated 22.01.1986 passed in Civil Appeal No.5 of 1983, whereby the judgment and decree dated 18.12.1982 passed in R.C.S. No.69 of 1980 by the learned Civil Judge, Junior Division, Taloda, directing the respondent to deliver possession of the suit property to the deceased Khandu, came be set aside.

2. The deceased Khandu filed the above-numbered suit claiming possession over the suit property i.e. two galas out of House no.253 of village Mohide, Tq. Shahada, Dist. Dhule, on the

ground that it was let out to the respondent on monthly rent of Rs.16.50 Ps. with effect from 01.01.1973. The suit was resisted by the respondent mainly on the ground that the suit property was never let out to him by the deceased Khandu and on the contrary, the suit property was in possession of the respondent and his father since more than 35 to 40 years prior to filing of the suit. Therefore, the suit for recovery of possession, being not within limitation, was liable to be dismissed.

3. The trial Court decreed the suit holding that the suit property was let out by the deceased Khandu to the respondent. The trial Court further held that the suit is within limitation in view of Article 65 of the Limitation Act, 1963 ("the Act of 1963", for short)

4. The respondent filed the above-numbered Civil Appeal to challenge the judgment and decree

passed by the trial Court. The learned Judge of the first appellate Court, after considering the evidence on record and hearing the learned Counsel for the parties, held that the suit property was never let out by the deceased Khandu to the respondent on rent. The learned Judge further held that the present suit is governed by Article 142 of the Limitation Act, 1908 ("the Act of 1908", for short). Therefore, the suit for possession of the suit property was required to be filed within a period of 12 years from the date of dispossession or discontinuation of possession of the deceased Khandu. The learned Judge found that the suit property was in possession of the respondent for more than 12 years prior to filing the suit and therefore, the suit was barred by the law of limitation. Ultimately, the learned Judge of the first appellate Court reversed the judgment and decree passed by the trial Court and dismissed the suit.

5. This Second Appeal was admitted to consider the substantial question of law of limitation applicable to the present suit.

6. Since nobody was appearing on behalf of the appellants, Mr.N.L.Jadhav, learned Counsel was appointed as per the order dated 08.06.2017 to assist the Court on behalf of the appellants.

7. The learned Counsel for the appellants submits that the suit was filed in the year 1980 and therefore, it would be governed by Article 65 of the Act of 1963. Consequently, it was necessary for the respondent to establish that his possession over the suit property became adverse to the deceased Khandu prior to 12 years of filing of the suit. According to him, the respondent failed to establish his adverse possession over the suit property. Therefore, the trial Court rightly held that the suit was within limitation

and rightly decreed the suit. He submits that the first appellate Court wrongly applied the provisions of Article 142 of the Act of 1908 and wrongly held that the suit is not within limitation.

8. As against this, the learned Counsel for the respondent submits that there is sufficient evidence on record to show that the respondent and his father were in continuous possession of the suit property since more than 12 years prior to coming into force of the Act of 1963 i.e. on 01.01.1964. Therefore, as per the provisions of Section 31 of the Act of 1963, the suit, which was beyond the period of limitation, as prescribed under the Act of 1908, prior to coming into force of the Act of 1963, would not attract the provisions of the Act of 1963. He submits that the first appellate Court rightly considered this legal aspect of the matter and rightly held that the suit was not within the limitation.

9. In order to show the exclusive possession of the respondent over the suit property since before 12 years prior to coming into force of the Act of 1963, the respondent relied on the receipt Exh.45 dated 03.08.1976 executed by the deceased Khandu and the present appellant no.3 – Ratilal in favour of the respondent, wherein they have specifically mentioned that the respondent was in possession of the suit property since before 45 years. As such, the respondent was stated to be in possession of the suit property since 1931 onwards continuously. This receipt does not show that the respondent was occupying the suit property as tenant of the deceased Khandu. There is absolutely no evidence on record to show that the suit property was let out by the deceased Khandu to the respondent on rent at any particular point of time. Therefore, the case of the deceased Khandu that the respondent was occupying the suit property as a tenant cannot be accepted.

10. Since the suit property was in possession of the respondent from the year 1931 onwards i.e. for more than 12 years prior to coming into force of the Act of 1963, in order to recover possession thereof on the basis of the title, it was necessary for the deceased Khandu to file the suit within a period of 12 years from discontinuance of his possession thereon, as mentioned under Article 142 of the Act of 1908. Here, reference may be made to Section 31 of the Act of 1963, which reads as under :-

31. Provisions as to barred or pending suits, etc. - Nothing in this Act shall, -

(a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908, expired before the commencement of this Act; or

(b) Affect any suit, appeal or application instituted, preferred or made, and pending, at such commencement."

11. As per Article 142 of the Act of 1908, for recovery of possession of immovable property, when the plaintiff, while in possession of the suit property, has been dispossessed or has discontinued the possession, the suit is required to be instituted within a period of 12 years from the date of dispossession or discontinuance. As stated above, the deceased Khandu was not in possession of the suit property from 1931 onwards. Since his possession over the suit property was discontinued for more than 12 years prior to coming into force of the Act of 1963, had the suit for recovery of possession been filed by the deceased Khandu, it would have been barred by limitation vide Article 142 of the Act of 1908. If

that be so, even if the suit was filed in the year 1980, it would not be governed by the Act of 1863 in view of the provisions of sub-clause (a) of Section 31 of the Act of 1963.

12. The first appellate Court has rightly considered the provisions of limitation applicable to the facts of the present suit and has rightly held that the suit was not within limitation. The first appellate Court has rightly dismissed the suit on the ground that it was not within the prescribed period of limitation. I do not find any illegality, infirmity or perversity in the judgment and decree passed by the first appellate Court.

13. The appeal is devoid of substance. It is liable to be dismissed and accordingly, dismissed. No costs.

[SANGITRAO S. PATIL, J.]

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