

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

**SECOND APPEAL NO. 504 OF 2016
(Chanbasawabai Shivling Vairagkar, Since deceased
through L.Rs. Bandappa Shivling Wairagkar and
another Vs. Pravin Bandappa Wairagkar and another)**

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Mr. Parag V. Barde, Advocate for Appellants
Mr. S.N. Patne, Advocate for the Respondents

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CORAM : SANGITRAO S. PATIL, J.

DATE : 17th JULY, 2017

ORAL ORDER :

Heard the learned counsel for the parties.

2. The learned counsel for the appellants submits that the deceased plaintiff - Chandbasawabai was a limited owner of the suit property since as per the compromise decree effected in Regular Civil Suit No. 278 of 1983, she was put in possession of the suit land with a specific condition that she would not create any

encumbrance thereon or transfer it in any manner during her lifetime and after her demise, the suit land would belong to her son Bandappa/Bandu. According to him, as per sub-section (2) of Section 14 of the Hindu Succession Act, the deceased Chandbasawabai would not become absolute owner of the suit land and therefore, the alleged sale-deed that was got executed by playing fraud on her by the son of Bandappa namely Pravin, would be void since she was not having title over that land. However, the Trial Court as well as the First Appellate Court did not consider the effect of sub-section (2) of Section 14 and treated the deceased Chandbasawabai as an absolute owner of the suit land. According to him, this is the first legal point that is required to be considered in the Second Appeal.

3. The learned counsel for the appellants then submits that the suit has been wrongly dismissed

on the ground of limitation. According to him, the sale transaction in respect of the suit land, being void, in view of the judgment in the case of ***Amruta Kaluji Shejul, since dead, through his LR. and others Vs. Vithal Ganpat Wadekar and others*** 2016 (5) Bom.C.R. 57, the provisions of Article 59 of the Limitation Act would not be applicable and the period of limitation for challenging such sale-deed would be twelve years as contained in Article 65 of the Act. He submits that in the deposition of Gundabai, the daughter of the deceased Chandbasawabai, there is a vague statement that she came to know about execution of the sale-deed in respect of the suit land after 8 to 15 days. However, there is no specific mention as to from which date, that period of 8 to 15 days started. Therefore, according to him, on the basis of such vague evidence, the suit should not have been dismissed on the ground of limitation. He submits that the point of limitation also is

another law point, which is required to be considered in this Second Appeal.

4. The learned counsel for the respondents submits that there is specific mention in the evidence of Gundabai that she came to know from her mother i.e. the deceased Chandbasawabai that her mother had got knowledge about the sale-deed in respect of the suit land after 8 to 15 days and this period of 8 to 15 days necessarily should be from the date of execution of the sale-deed. He, therefore, submits that the suit would be governed by Article 59 of the Limitation Act and since the suit has not been filed within three years from the date of the alleged fraud, it would be beyond the period of limitation. Accordingly, he submits that the Trial Court as well as the First Appellate Court have rightly dismissed the suit on the ground of limitation.

5. So far as the first legal question

canvassed by the learned counsel for the appellants is concerned, prima facie, I find substance that as per sub-section (2) of Section 14 of the Hindu Succession Act, the deceased Chandbasawabai received the suit land pursuant to the compromise dated 22nd June, 2010 effected in Regular Civil Suit No. 92 of 2008 and got limited right to hold the suit land during her lifetime and she had no right to transfer the suit land in any manner. As such, it is prima facie clear that the provisions of sub-section (1) of Section 14 of the Hindu Succession Act would not be applicable and the question about her title to the suit land ought to have been considered by the Trial Court as well as the First Appellate Court, keeping in view the provisions of sub-section (2) of Section 14 of the Hindu Succession Act. This legal question of law will have to be considered by this Court.

6. About the second ground in respect of limitation of the suit, as held in the case of ***Amruta Kaluji Shejul, since dead, through his LR. and others*** (supra), when the document of title is considered to be void, the period of limitation to challenge such instrument would be governed by Article 65 of the Limitation Act. In the present case, the title of the deceased Chandbasawabai to alienate the suit land itself was not absolute since she had a limited estate in the suit land. In the circumstances, the question of limitation will have to be considered keeping in view this aspect of the matter. If it is found that the deceased plaintiff – Chandbasawabai was not the absolute owner of the suit land in view of the provisions of sub-section (2) of Section 14 of the Hindu Succession Act, the period of limitation for filing the suit in respect of the sale-deed of the suit land will have to be re-considered. This certainly would be a substantial question of law

that will be required to be considered in this Second Appeal. Hence, I formulate the following substantial questions of law for consideration in this Second Appeal.

(i) Whether the deceased Chandbasawabai was the absolute owner of the suit land on the face of sub-section (2) of Section 14 of the Hindu Succession Act ?

(ii) Whether the suit would be governed by Article 65 and not by Article 59 of the Limitation Act ?

7. **Admit** the appeal.

8. Upon admission of the appeal, Mr. S.N. Patne, the learned counsel waives service of notice on behalf of respondent Nos. 1 and 2.

9. There was no injunction granted in favour of the appellants during pendency of the suit as

well as the appeal before the District Court. Admittedly, the respondents are in possession of the suit land. Consequently, no relief of injunction can be granted in favour of the appellants. In the circumstances, Civil Application No. 10397/2016 is disposed of.

[SANGITRAO S. PATIL]
JUDGE