

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

**CIVIL APPLICATION NO. 10287 OF 2017
IN/WITH SA (ST.) NO.9514 OF 2017**

Dattu Hariba Jadhav Died through
L.Rs.

1. Pandurang s/o Dattu Jadhav
Age : 60 Years, Occu: Agriculture.
2. Raghunath s/o Dattu Jadhav
Age : 50 Years, Occu: Agriculture.
3. Mathurabai w/o Dattu Jadhav
Age : 83 Years, Occu: Agriculture.

All R/o Darphal,
Tq.Dist. Osmanabad.

...Applicants
(L.Rs. of Ori.Plaintiff)

Versus

Trimbak Gena Dandnaik Died through
L.Rs.

1. Vinod @ Papa s/o Trimbak Dandnaik
Age : 46 years, Occu: Agriculture.
2. Arun @ Balu s/o Trimbak Dandnaik
Age : 53 years, Occu: Agriculture.
3. Shakuntala w/o Trimbak Dandnaik
Age : 83 years, Occu: Agriculture.

All R/o Darphal,
Tq.Dist. Osmanabad.

...Respondents
(L.Rs. of Ori.Defendent)

Mr.S.V. Chandole, Advocate h/f Mr.B.M.Waghmare,
Advocate for Applicants.
Mr.S.S.Wakure, Advocate for Respondent Nos. 1 to 3.

CORAM : NITIN W. SAMBRE, J.
DATED : 14th NOVEMBER, 2017.

ORAL ORDER :-

1. Heard respective counsel at length.
2. In view of no objection given by the Respondents, delay of 431 days caused in filing Second Appeal stands condoned. Civil Application stands allowed. The appeal is taken up for admission.
3. The present appellants are the original plaintiffs in Regular Civil Suit No.224 of 1993, which was for declaration of ownership and perpetual injunction, and in alternative declaration of ownership on the basis of adverse possession.
4. The said suit was dismissed against original defendants No.3 and 4 for failure of Plaintiffs to take steps. The trial court decreed the suit vide Judgment and order dated 10.10.2007. The trial court dismissed the suit qua relief of declaration in favour of the appellants, however, restrained the Respondents/defendants perpetually from interfering with the possession of the Plaintiffs over the suit land.

5. The learned District Judge-4, Osmanabad, allowed the appeal, dismissed the suit and also cross-objection vide Judgment and decree dated October 05, 2015. As such, this second appeal.

6. The learned counsel for the appellants would invite attention of this court to the provisions of Article 58 of the Limitation Act, 1963 and corresponding Article 120 of the Indian Limitation Act, 1910. According to him, both these provisions are *pari-materia*. According to him, cause of action for instituting the suit in question has to be construed to mean the first time obstruction caused in the enjoyment of property by the appellants/plaintiffs. So as to substantiate this contention, he would rely on the Judgment in the matter of *Annamalai Chettiar and others Vs. A.M.K.C.T. Muthukaruppan Chettiar and others* decided on October 14, 1930, and also the Judgment of Apex Court in the matter of *C.Mohammad Yunus Vs. Syed Unnissa and Ors.* reported in AIR 1961 SC 808, particularly paragraph No.7 of the said Judgment.

7. According to him, the finding recorded by the appellate court that the suit was barred by limitation as the

first cause of action arose to the appellants/plaintiffs in 1975 is incorrect findings of fact. He would then urge that the cause of action in the said suit is required to be appreciated wherein, the respondents/defendants have caused interference in the peaceful possession and enjoyment of the suit property. He, therefore, submits that following substantial question of law needs to be framed :-

Whether the lower appellate court has committed an error of law in recording finding that pursuant to the provisions of Article 58 of the Limitation Act, the suit of the present appellants/plaintiffs was barred by limitation ?

8. Per contra, the learned counsel for the respondents, Mr.Wakure would oppose the claim on merit. According to him, the appellate court appreciated the evidence of the present appellants/plaintiffs and noticed that they have executed the sale deed in favour of the respondents on 28th April, 1970. He would urge that what is sought by the present appellants is declaration that they are owners of the suit property; based on the document of Sale deed. He submits, from the cross-examination of the appellants that first cause of action to the present appellants arose in 1975, when they claimed to have

returned the amount/mortgage money of Rs.2,000/- and the respondents have refused to hand over the document and acknowledge the ownership of the appellants. They sought dismissal of the present appeal.

9. So far as the substantial question of law that is sought to be raised by the learned counsel for the appellants by relying upon the provisions of Article 20 of the Indian Limitation Act, 1910 and Article 58 of the Limitation Act, 1963 is concerned, the proposition of law that the limitation has to be counted from the date of the first cause of action accrued to the appellants/plaintiffs is even not disputed by the respondents/defendants.

10. What is disputed by the respondents/defendants is cause that accrued in the plaint against the respondents/defendants is not the first cause, as it could be borne from the cross-examination of the appellants/plaintiffs that first cause accrued to the appellants in 1975, when they claimed to have returned the mortgage money of Rs.2,000/-.

11. With the assistance of the learned counsel, I have perused cross-examination of the appellants, which is

almost in 3 parts. During the said recording of cross-examination, the appellants in clear terms admitted that in 1975, the present respondents/defendants have denied their title to the said property and have refused to handover the registered original document.

12. In the wake of above, the appellate court, in my opinion, has rightly invoked the provisions of Article 58 to reach to conclusion that the claim of the appellant was not within limitation as first cause of action accrued in 1975.

13. There is one more facet to the present matter and that is, the execution of the sale deed dated 28.04.1970 was well within the knowledge of the appellants/plaintiffs as could be borne out of cross-examination which is referred herein above. Once the said sale deed was well within his knowledge, it was expected of the plaintiffs to challenge the said Sale deed, in addition to seeking declaration of ownership of the property.

14. The said issue was also considered and answered against the present appellants, particularly, having regard to the law laid down by the Apex Court in the matter of *N.V.Shrinivisan Murthy and others Vs. Mariyamma reported*

in AIR 2005 SC 2897 and Union of India and others Vs. West Coast Paper Mills Ltd and another reported in AIR 2004 SC 1596.

15. For the reasons stated herein above, no substantial question of law is involved in the present second appeal. The appeal lacks merit and as such stands dismissed.

(NITIN W. SAMBRE, J.)

mta/-