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

**SECOND APPEAL NO. 545 OF 2015
WITH
CIVIL APPLICATION NO.12284 OF 2015
IN
SECOND APPEAL NO.545 OF 2015**

Sau. Rajani Ramesh Patil,
Age: 61 years, Occ: Housewife,
R/o. Nashirabad,
Tq. & Dist. Jalgaon.

.APPELLANT

VERSUS

1. Yashwant Soma Dhake,
Age: 72 years, Occ: Retired,
R/o. Mangla Nivas, Kazipura,
A/p. Savda, Tq. Raver,
Dist. Jalgaon.
2. Late Madhuri Waman Chaudhari.
(Deceased) Through legal heirs
- 2A. Waman Damu Chaudhari,
Age: 75, Occ: Retired,
R/o. Nitin Raghunath Patil,
Plot N.16/2, Forest Colony,
Ring Road, Jalgaon.
- 2B. Sau. Aparna Mitharam Sarode,
Age: 44, Occ: Service,
R/o. Near Gopal nagar Police Chawki,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.
- 2C. Sau. Archana Vinod Sarode,
Age: 43, Occ: Service,
R/o. Rajya Karmachari Hous. Society
B-77, Satpur, Ashok Nagar,
Nashik.

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- 2D. Sau. Varsha Yogesh Sarode,
Age: 36, Occ: Doctor,
R/o. Dombivali (E), Mumbai.
3. Late Laxman Narayan Mahajan,
Late Yogesh Laxman Mahajan
(Deceased) Through legal heirs
Smt. Nairmalabai Laxman Mahajan,
Age: 55, Occ: Housewife,
R/o. Plot No.11, Ram Nagar,
Jalgaon.
4. Late Purushottam Laxman Wani,
(Deceased) through legal heir
- 4A. Smt. Padmabai Purushottam Wani,
Age: 57, Occ: Housewife,
- 4B. Shri. Harshal Purushottam Wani,
Age: 37 years, Occ: Service,
- 4C. Shri. Amol Purushottam Wani,
Age: 32 years, Occ: Service,
No. 4 to 4C all R/o. 36,
Ramnagar near shirsoli Naka,
Jalgaon.
- 4D. Sau. Madhuri Krushnakumar Wani,
Age: 34 years, Occ: Housewife,
C/o. Shri. Raghunath Trambak
Wani, R/o. Rath Chowk,
R.L. Jewelers, Jalgaon.
5. Ashok Govinda Suryavanshi,
Age: 52 years, Occ; Service,
R/o. Unit No.2, Gurukul Society,
M.I.D.C. in the house of Mali
Mamlatdar, Jalgaon.
6. Prabhakar Govinda Mahajan,
Age: 62, Occ: Business,
R/o. Perfect Electricals,
Plot No.33/8, Santoshi Mata
Nagar, Behind Market ward,

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Jalgaon.

..RESPONDENTS

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Mr P.R. Katneshwarkar, Advocate for appellant;
Mr. P.R. Patil, Advocate for respondent Nos. 1, 2A
to 2D;
Mr Vijay Y. Patil, Advocate for respondent Nos.5
and 6;

CORAM : N.W. SAMBRE, J.**DATE : 17th JULY, 2017****ORAL ORDER :**

Present appellant is defendant No.3 to Regular Civil Suit No.219 of 1989, which was filed by respondents herein for declaration, injunction, removal of encroachment and possession. The claim of respondents-plaintiffs was based on title over the suit land, which was purchased by them, to the extent of 3900 sq. fts. by virtue of sale deed dated 12th September, 1973 for consideration of Rs.10,000/-. It is claimed that the property stood vested by virtue of said sale deed in favour of plaintiffs-respondents and possession thereof passed on them.

2. The said suit was resisted by present

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appellant-defendant No.1 vide written statement at Exhibit-45. Issues which are framed by the learned trial Court at Exhibit-46 are as under.

(1) Do plaintiffs prove that the sale deed of the suit property executed on 27.1.87, the correction deed dated 22.3.87, the sale deeds dated 1.4.87, 28.7.87, 24.8.87 are illegal, void abinito?

(2) Do they further prove that the defendant no.3 and 5 had encroached upon the suit property and carried out illegal construction thereon?

(3) Are plaintiffs entitled for the reliefs of declaration, mandatory and perpetual injunction?

(3A) Are plaintiffs entitled for the possession of suit plot from the defendants as prayed?

(4) What order or decree?

3. The trial Court has recorded findings on

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the above referred issues in the affirmative.

4. Present respondents-plaintiffs in support of their claim examined Waman Damu Chaudhari, husband of respondent No.2-plaintiff No.1 and power of attorney holder of plaintiff No.1, PW-2 Pralhad Mahahan at Exhibit-110, whereas appellant-defendant No.3 examined her father in law Zavaru Damu Patil. The documents in the form of revenue record viz., 7/12 extracts, Index-II and sale deeds were produced on record.

5. The trial Court proceeded to decree the suit of the present respondents-plaintiffs, which was confirmed in appeal being Civil Appeal No.128 of 1993 passed by learned District Judge-1, Jalgaon vide judgment and order dated 27th February, 2015. As such, this second appeal.

6. Learned Counsel for the appellant, while inviting attention of this Court to the provisions of Section 3, Articles 64 and 65 of the Limitation

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Act and judgment of the Apex Court in the matter of **Ramiah vs N. Narayana Reddy (dead) by L.Rs.** reported in **(2004) 7 SCC 541**, would urge that suit is not within limitation. According to him, plaint does not disclose details as to when the respondents-plaintiffs were dispossessed and in view thereof, it has to be held that the suit is barred by limitation. He would then urge that the plaintiffs have not claimed that they were put into possession of the suit property at the time of sale deed or even if presuming that such pleadings are there and it is mandatory to demonstrate on the part of plaintiffs that suit was within limitation by pleading specific date of dispossession.

7. Learned Counsel for the appellant would invite attention of this Court to the observations made by the Apex Court in paragraph-9 of the judgment in the matter of **Ramaih**, cited supra.

8. While opposing the claim, Mr. Patil, learned Counsel appearing for the original

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plaintiffs-respondents herein would urge that title to the suit property came to be vested in respondents-plaintiffs by virtue of registered sale deed and there is specific mention that the possession of the suit property stood vested in the present respondents-plaintiffs. He would then invite attention of this Court to certain pleadings in the plaint viz., claiming that suit claim was within limitation, pleadings in paragraph-7 of the plaint that on 20th June, 1988 it was noticed that defendant No. 1 has executed sale deed of the same property, of which, the plaintiffs were owner in favour of appellant-defendant No.3 and also as regards in December, 1988 encroachment by defendant No.3-appellant herein was noticed. He would then invite attention of this Court to the written statement filed by appellant, which, according to him, is vague in nature. He would then urge that burden that suit was within limitation was properly discharged as limitation has to be construed from the period of knowledge of dispossession noticed by the plaintiffs. According to him, the suit

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property prior to dispossession remained vacant and as such, against concurrent findings, the appeal needs to be dismissed. In addition, plea is raised that the appellant herein cannot claim better title to the property in question, particularly when title to the property stood transferred and vested in respondents-plaintiffs by virtue of sale deed dated 13th October, 1980, whereas present appellant claimed to have received title to the suit property by virtue of sale deed dated 1st April, 1987.

9. Having considered the rival submissions of the parties, it is required to be noted that title in favour of the respondents-plaintiffs stood vested them by virtue of sale deed dated 13th October, 1980 to the extent of area 3900 sq. fts. The provisions of Registration Act contemplates that mutation of the property in favour of present plaintiffs-respondents through the said process of sale deed and as such, just because the appropriate mutation in the name of respondents-plaintiffs was not carried out, same cannot be read to the benefit

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of appellant-defendant No.3. Admittedly, defendant No.3 acquired the title to the suit property by virtue of sale deed dated 1st April, 1987. As such, it cannot be inferred that the appellant-defendant No.3 had better title to the suit property than that of plaintiffs. Appropriate support can be drawn from the judgment of Apex Court in the matter of **Atla Sidda Reddy vs Busi Subba Reddy and others**, reported in **2010(6) Mh.L.J. 13**.

10. This takes me to the next submission of the appellant that the suit is not within limitation. So as to assess the said issue, it is required to be noted that in paragraph-7 of the plaint, the plaintiffs-respondents have specifically come out with a case that in June, 1988 they came to know about alleged sale deed by defendant No.1 in favour of defendant No.3. It is further alleged that in first week of December, 1988 they have noticed that present appellant-defendant No. 3 has entered the suit property and

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has started development. Apart from above, present respondents-plaintiffs in categorical terms state^{4d} in plaint that they have received lawful possession of the suit property at the time of execution of the sale deed. So as to establish such possession over the suit property, plaintiffs-respondents have examined husband of plaintiff No.2 and PW-2 Pralhad. 7/12 extracts which are produced on record speak of possession of present respondents-plaintiffs over the suit property immediately after registration of the sale deed in their favour.

11. Defendant No.3 instead of specifically denying the issue of limitation has in vague manner stated her denial as to claim of the plaintiffs that suit is within limitation in her written statement. Apart from above, though attention of this Court is invited to the provisions of Section 3 of the Limitation Act so as to sought dismissal of the suit, in my opinion, provisions of Section 3 of the Limitation Act will be attracted provided the plaintiffs-respondents have failed to

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demonstrate from the pleadings in the suit that the suit was not within limitation. As discussed herein before, it has to be considered and held that the cause of action as has been alleged to have been arisen in 1988 for filing of the suit in question is properly pleaded, particularly when it is based on having noticed that defendant No. 3 has entered into possession and started development over the suit property. The limitation has prescribed either under Article 64 or 65, particularly when the respondents-plaintiffs had title over the suit property is provided to be 12 years from the date of cause of action. Article 64 provides for cause of action to have accrued from the date of possession, whereas Article 65 provides for cause of action when the possession of defendant becomes adverse to the plaintiffs.

12. The fact that there was initial possession of the plaintiffs over the suit property and in the first week of December-1988, they noticed possession of defendant No. 3 over the suit

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property claimed to have given them the cause of action. Such pleadings since are not specifically denied and by independent cogent evidence, it has been brought on record that the issue of possession having noticed, the suit came to be filed, prompts this Court to draw conclusion that the suit was well within limitation.

13. In the wake of above, in my opinion, the appeal lacks substantial question of law. As such, the appeal fails and stands dismissed. Consequently, pending civil applications stand disposed of.

14. So far as the claim of original defendant Nos. 4 and 5 under the provisions of Order 9 Rule 13 of the Code of Civil Procedure, which is subjudice before the Court below, be decided independently with above observations.

(N.W. SAMBRE, J.)