

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.782 OF 2016
WITH
CIVIL APPLICATION NO.1556 OF 2016**

Shri Ramchandra Mahadu Mendre ... Appellant
Versus

Sau. Rekha Dyaneshwar Sadguru
And Others ... Respondents

Mr. Vikram Sathaye i/b Yogita M. Deshmukh for the Appellant.
None for the Respondents.

CORAM : S.C. GUPTE, J.

DATE : 23 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the Appellant. The Respondents are absent though duly served. In pursuance of the order passed by this Court on 17 January 2017, an affidavit of service has been duly filed by the Appellant.

2 The second appeal is admitted on the following substantial question
of law :

(i) Whether the First Appellate Court was right in law in rejecting the Appellant's plea of bar of limitation relying on the decision of the Supreme Court in the case of

Rameshwar Dubey Vs. Masumath Asha¹ ?

3 The dispute between the parties pertains to occupation and possession of the suit property. The sale deed, on the basis of which the Appellant claims to own and occupy the suit property, is held to be fraudulent by the First Appellate Court. The plea of limitation on the basis of which the Trial Court had nonsuited the Respondents in so far as their claim for declaration of nullity of the sale deed is concerned, is rejected by the First Appellate Court on the ground of law laid down by the Supreme Court in the case of **Rameshwar Dubey Vs. Masumath Asha**. That case did not deal with cancellation of an agreement which is fraudulent, but dispossession of the property based on fraud. This Court found *prima facie* merit in the Appellant's contention that the law applied by the First Appellate Court on the plea of the limitation suffers from serious error of law. In the premises, the Appellant deserves protective relief in respect of the suit property.

4 The civil application is, accordingly, allowed in terms of prayer clause-(b), which seeks a temporary injunction from creating third party rights over the suit property by the Respondents. It is also ordered that the Respondents shall not cause any change to the effected revenue entries in respect of the suit property during the pendency of the second appeal. The civil application is disposed of accordingly.

(S.C. GUPTE, J.)

1 1996 (11) SCC 160