

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.342 OF 2013

Jagannath Shankar Sable

..Appellant

-Versus-

Baban Shankar Sable & Ors.

..Respondents

Mr. Vilas Tapkir with J.S.Yadav for appellant
None for respondent.

CORAM : N.M. JAMDAR, J.

DATE : 19th April 2017.

ORAL ORDER:-

1] The appellant had filed a suit bearing No.295 of 2008 in the court of Civil Judge, Junior Division, Pune, seeking partition of the suit properties. A declaration was also sought that two sale deeds namely, sale deed dated 12th April 1988 and 5th April 1997 be held to be not binding on the share of the plaintiff. The learned Civil Judge by the judgement and order dated 3rd May 2010 dismissed the suit. Learned Civil Judge held that the properties were not joint family properties and the claim of the appellant that the sale deeds are not binding on him, deserves to be rejected.

2] The appellant, thereafter, filed Civil Appeal No.553 of 2010 which was dismissed by the learned District Judge on 20th February 2012. The learned District Judge held that the properties were joint family properties. However, the appellant failed to prove that the sale deed is not binding on the appellant and the suit for declaration was not within limitation.

3] The learned Counsel for the appellant submitted that the issue of limitation was not framed by the learned Civil Judge and if it had to be held against the appellant, then, as per the provisions of Order 41 Rule 25 of C.P.C., the learned District Judge ought to have remanded the proceedings. He submitted that the sale deed dated 13th April 1988 was admittedly not signed by the appellant.

4] To appreciate the contentions of the learned Counsel for the appellant as regards the issue of limitation, I have gone through the plaint filed by the appellant. In the plaint itself, the appellant has stated that the sale deed was executed on 13th April 1988/ 22nd March 1990 and the second sale deed was executed on 21st January 1997. The suit challenging these two sale deeds was filed

on 6th February 2008.

5] Section 3 of the Limitation Act places a mandate on Court to examine whether the relief sought for by a plaintiff is within limitation and the plea of limitation can be taken up at any stage. In the present case from the perusal of the plaint itself, it could be seen that the relief sought for of setting aside the sale deed was beyond the period of limitation.

6] As regards the sale deed dated 5th April 1997, it has been signed by the appellant. The Courts have found that no cogent reason has been given as to why the sale deed needs to be set aside which has been admittedly signed by the appellant. Learned Counsel for the appellant has accepted the position that except for these two properties, there are no other joint family properties and, therefore, the sale deed has been challenged and, thereafter, partition has been sought.

7] In view of the above discussion, the view taken by the learned District Judge that the claim of the appellant was beyond the period

of limitation is correct. Even on merits, no cogent reason was given as to why the sale deed which was signed by the Appellant should be set aside. No substantial question of law arises in this second appeal and the same is accordingly dismissed.

(N.M.JAMDAR, J.)