

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO.638 OF 2007
WITH
CIVIL APPLICATION NO.1018 OF 2005
IN
SECOND APPEAL NO.638 OF 2007**

Shravan Chimna Wagh & Ors.

...Appellants
(Original Defendants)

vs.

Chintaman Govind Wagh

...Respondent
(Original Plaintiff)

....

Ms. Priyanka Dave, i/b. S.M. Sabrad, for the Appellants.

Ms. Manjiri Parasnis, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED : 27 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Second Appeal challenges a judgment and order passed by the II Additional District Judge, Nashik in Civil Appeal No.52 of 2002. By the impugned judgment and order, the learned District Judge allowed the Respondent's appeal and decreed his suit restraining the Appellants from causing any obstruction to the Respondent's possession of the suit lands.

3. The Respondent (Original Plaintiff) filed the present suit for declaration and permanent injunction against the Appellants (Original Defendants) restraining the latter from disturbing his peaceful possession. The suit was dismissed *inter alia* on the footing that the suit was barred by the law of limitation. The matter was carried in appeal before the II Additional District Judge, Nashik at Nashik. The first Appellate Court allowed the Plaintiff's appeal and dismissed the Defendants' cross-objections. The Court declared the Plaintiff to be the owner and in possession of the suit lands and restrained the Defendants from causing any obstruction to his possession. When the matter came before this Court in Second Appeal, this Court remanded the matter to the first Appellate Court to decide the issue of limitation. The first Appellate Court, thereupon, heard the matter on the issue of limitation and held that the suit was not barred by limitation. That order is also made the subject matter of challenge by amending the present Second Appeal.

4. It is submitted by learned Counsel for the Appellants that the lower Appellate Court has committed a substantial error of law in deciding the issue of limitation in favour of the Plaintiff. He submitted that the Court ought to have applied Article 58 and held that the suit was barred by limitation. The lower Appellate Court has come to the conclusion that there was evidence on record to show that the Plaintiff had both the title and possession of the suit land and that the Defendants having obstructed the Plaintiff in his possession of the suit lands on 15 May 1998, the suit having been filed immediately thereafter, the suit was

within time. The lower Appellate Court did not agree with the Trial Court that the Defendants had proved that they were in possession of the suit land for more than 20 to 25 years. The question of possession of the Plaintiff and the Defendants' interference with such possession are pure questions of fact, on which the lower Appellate Court was the last fact finding authority. Its conclusion as a matter of fact does not suffer from any legal infirmity. None was pointed out at the bar at the hearing of the appeal. In the premises, there is no question of applying Article 58 of the Limitation Act and non- suiting the Plaintiff on that basis. The decision of the lower Appellate Court on the question of bar of limitation does not, accordingly, give rise to any substantial question of law.

5. Learned Counsel for the Appellants also submits that the lower Appellate Court has not correctly appreciated the merits of the controversy. She submits that, despite his name being reflected in the record of rights over a long period of time, the first Appellate Court disregarded the title and possession of the Appellant's father Chimna of the suit land. It is pertinent to note, and it is observed accordingly by the lower Appellate Court, that there was nothing to show that the suit land belonged to the alleged joint family of Bhavdu, which comprised of his descendants, Chimna and Dagadu. (The Appellants claim through Chimna, whilst the Respondent claim through Dagadu). The lower Appellate Court noted that the record before the Court merely indicated that the property, which originally stood in the name of Govind (Dagdu's son), devolved upon Khandu and Chitamani, sons of Govind (grandsons of Dagdu) (Chintaman being the original Plaintiff in the present suit). When the property was mutated, after Govind's death, since both Khandu

and the Plaintiff were minors, the name of Chimna (the brother of Dagadu) was entered in the record of rights as the guardian of Khandu and the Plaintiff. In other words, there was nothing to show that Chimna, the predecessor of the Defendants, held the suit land at any time in his own right. The genealogy of the family, who held the property, was claimed to be originally from Bhavdu by the Defendants, Bhavdu, having been succeeded by Chimna and Dagadu, the Defendants claiming through Chimna and the Plaintiffs claiming through Govinda, son of Dagadu. The first Appellate Court held that there was no evidence either that the property was owned by the joint Hindu family, of which the Defendants or their predecessor were the coparceners, or that Govinda, the predecessor of the Plaintiff, in whose name the property always stood, was holding the property in his capacity as a karta or a member of the joint family comprising of Chimna and Dagadu and their descendants. The lower Appellate Court came to the conclusion that the Plaintiff had proved both his title and possession of the suit land and the Defendants were not entitled to obstruct his possession. No substantial question of law arises from these findings.

6. The Second Appeal is, accordingly, dismissed. No order as to costs. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)