

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

WRIT PETITION NO. 13491 OF 2016

Mr. Maruti Bhagu Kank.

Petitioner

Vs

Mr. Dagdu Sadu Kank and Ors.

.. Respondents

Mr. Arvind P. Purohit , Advocate for Petitioner.

Mr. Vivek V. Salunke., Advocates for Respondents no. 1 to 5.

CORAM : R.G.KETKAR,J.

DATE : 25/01/2017

PC:

1. Heard Mr. Arvind Purohit, learned counsel for the petitioner and Mr. Vivek Salunke, learned counsel for respondents no. 1 to 5 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as defendant no.2, has challenged the Judgment and order dated 26.8.2016 passed by the learned 6th Jt. Civil Judge, Senior Division, Pune below Exhibit-39 in Spl. Civil Suit No.1285 of 2009. By that order, the learned trial Judge held that suit instituted by respondents no.1 to 5, hereinafter referred to as plaintiffs, is not barred by law of limitation.

3. Rule. Mr. Salunke waives service. Mr.Purohit seeks permission to delete respondents no. 6 to 13 as they are defendants no. 3 to 9 and 1 respectively and, respondents no. 1 to 5 being the original plaintiffs, are only contesting respondents.

On the motion made by Mr. Purohit, leave to delete respondents no. 6 to 13 is granted. Amendment shall be carried out forthwith. Having regard to the narrow controversy raised in this petition as also at the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

4. In support of this petition, Mr.Purohit has taken me through oral evidence adduced by the parties and in particular cross examination of plaintiff no.1-Dagadu Kank. He submitted that the learned trial Judge has not dealt with the cross examination of this witness. He has invited my attention to paragraph 11 of the plaint wherein the plaintiffs have averred that cause of action firstly accrued on 21.3.2007 and thereafter on 5.4.2008 and, therefore, the suit instituted in the year 2009 is within limitation.

5. In paragraph 13 of the impugned order, the learned trial Judge has referred to the applications filed by the plaintiffs to the Tahasildar, Bhore as also Special Land Acquisition Officer No.17. In paragraphs 20 and 23, the learned trial Judge has also referred to the revenue proceedings adopted by the plaintiffs. In paragraph 24, the learned trial Judge has observed that the plaintiff has instituted the suit on the basis of title over the suit property and the cause of action is shown to have arisen firstly on 21.3.2007 when the first R.T.S. Appeal before S.D.O, Bhore against mutation entry no.105 filed by defendants no.1 to 3 came to be dismissed. In paragraph 25, the learned trial Judge observed that the cause

of action also accrued on 5.4.2008 when the Judgment in Land References no. 292/1997, 297/1997 and 299/1997 was decided on 5.4.2008. Mr.Purohit submitted that the learned trial Judge, however, did not deal with the admissions given by plaintiff no.1 Dagadu in his cross examination.

6. Mr.Salunke supported the impugned order. After arguing the Petition for quite some time, he consents for setting aside the impugned order with direction to the trial Court to decide the application de-novo. He submitted that all contentions of the parties on merits may be kept open.

7. In view thereof, by consent of the parties, petition is disposed of in the following terms:

(i) Impugned order dated 26.8.2016 is set aside. Application Exhibit-39 filed by defendant nos 1 and 2 is restored to the file of the trial Court for deciding it de-novo. The learned trial Judge will consider entire material on record for deciding the issue of limitation and pass appropriate order. All contentions of the parties on merits are expressly kept open.

(ii) Rule is made absolute accordingly with no order as to costs.

(R.G.KETKAR, J.)