

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.22 of 2017
(Devidas s/o Barku Nasre v. Smt. Shashikala w/o Nagorao Karemore and
others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri Amit A. Choube, Advocate for Appellant.

Coram : R.K. Deshpande, J.
Date : 14th February, 2017

The Trial Court passed a decree cancelling the sale-deed dated 29-11-2005, said to have been executed by the defendant No.1 in favour of the defendant No.4, and a further decree for partition and separate possession was passed. In a regular civil appeal, the lower Appellate Court has modified the decree passed by the Trial Court. The decree passed setting aside the sale-deed dated 29-11-2005 has been set aside, but the decree passed for partition and separate possession is maintained, holding that the plaintiff and the defendant Nos.2 and 3 are entitled to 1/6th share each, and the defendant No.1 shall be entitled to half share in the suit field, excluding 1.21 HR of land sold to the defendant No.1. The lower Appellate Court has also held that the shares of the defendant Nos.2 and 3 be allotted to the plaintiff at the time of partition. The original defendant No.1 is before this Court in this second appeal.

Shri Choube, the learned counsel for the appellant/defendant No.1, has raised essentially two points - (i) that the the plaintiff had relinquished her share in the ancestral property; and (ii) that the suit was barred by the law of limitation, as contemplated under Article 65 of the Limitation Act. So far as the first point is concerned, it was the defence raised by the appellant/defendant No.1, who was required to plead and prove the same. There is absolutely no evidence brought on record to show that the plaintiff had relinquished her share in the suit property. So far as the second point is concerned, the sale-deed effected on 29-11-2005 was the subject-matter of suit filed in the year 2007, whereas Article 65 of the Limitation Act, upon which reliance is placed, prescribes the period of 12 years from the date of execution. Apart from this, the issue of limitation was never raised before the Trial Court, nor was raised before the lower Appellate Court. The dispute with regard to the execution could have been agitated before the Trial Court by leading evidence, and that has not been done.

No substantial question of law arises for consideration. The second appeal is dismissed.

Judge.