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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 190 OF 2012
WITH
CIVIL APPLICATION No. 1302 OF 2015

Chief Executive Officer,
Zilla Parishad, Kolhapur ... Appellant
Vs.
Shivendra Nagojirao Patankar & Ors. ... Respondents.

Mr. S. R. Nargolkar, for the Appellant.
Mr. Omprakash Parihar, for the Respondent No. 1.
Mr. A. R. Patil, AGP for the Respondent No. 2.

CORAM : A. M. DHAVALA, J.

DATE : AUGUST 21, 2018

ORAL JUDGMENT :

1. Following substantial question of law has been framed:

“Whether the Courts below were right in rejecting the contention of the Appellant as regards the institution of the suit beyond the period of limitation?”

2. Regular Civil Suit No. 259 of 2004 was filed by the Respondent No. 1 herein and other respondents for removal of encroachment. It is his case that the land bearing CTS No. 15624

(old Survey No. 1127) from village Nandani, taluka Shirol, district Kolhapur is owned by him. Previously, there was one road near the suit land. But the said road was closed and new road was created through his field, whereby there was encroachment over his land, to the extent of 42 R. Though he made representations on 28.8.1999, 21.7.2000 and 4.8.2001 for compensation or for granting him another land, there was no response from the defendants. Hence, he filed the suit for removal of encroachment or for acquisition of the land & grant of compensation.

3. The defendant – State did not file written-statement. The defendant Nos. 2 and 4 filed written-statement at Exhibit 20 and in para 8 thereof, they admitted that the suit land was belonging to the plaintiff. But they contended that no new road was created since it was existing since time immemorial. There was no encroachment and there was no question of grant of compensation. On the basis of these pleas, the issues were framed. Issue No. 4B was regarding limitation. The learned trial Judge observed that the plaintiff got measured the suit land on 2.8.2003 (it should be 2.8.2002) and when he realised that there was

encroachment, he has filed the suit under Art. 25 of the Limitation Act. It was held that the suit was within limitation. In Regular Civil Appeal No. 34 of 2007, Point No. 4 was regarding limitation. With the same reasoning of the trial court, the first appellate court held that the suit is within limitation.

4. Learned advocate Mr. Nargolkar appearing for the Appellant submitted that it was incumbent on the plaintiff to show that suit is within limitation and for that it was necessary for him to show the date, on which encroachment was made. No specific date of encroachment has been shown and plea of the defendant is that its use was from the time immemorial existing, therefore, suit is barred by limitation. This issue was not properly considered by both the courts below.

5. After hearing the learned advocates of both the parties, I find that suit is based on title. The plaintiff has specifically pleaded that he is owner of the property and the defendants have made encroachment on his land. Both the facts are admitted. The suit is governed by Article 65 of the Limitation Act. In such situation, the limitation starts running only on the date on which

possession of the defendants become adverse. There is no plea of adverse possession, raised by the defendants. In fact, there is a pleading of the plaintiff that earlier road was passing from CTS No. 15624. The said road was closed down and new road was constructed through the plaintiff's land old Survey No. 1127. There is no specific denial of this fact. For raising plea of adverse possession, the defendants must specifically state the date on which they came into possession and whether it was adverse to the plaintiff's possession. In the absence of specific pleading, there cannot be issue of adverse possession and when the plea of adverse possession has not been raised, the suit based on title cannot be said to be barred by limitation. I, therefore, find that there is no substance in the appeal.

6. The issue of substantial question of law cannot be determined on the basis of arguments, when there are no pleadings about adverse possession. As there was no question of limitation, the substantial question of law is answered in the affirmative. Therefore, the appeal fails.

7. Hence the appeal is dismissed with costs.

7. Civil Application No. 1302 of 2015 pending in this appeal does not survive and is accordingly disposed of.

Sd/-
[A. M. DHAVALE, J.]