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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.197 OF 2015
WITH
CIVIL APPLICATION NO.1607 OF 2017

Indubai Namdev Satuse Appellant

V/s.

Narmada Nivrutti Parkar Respondent

Mr. Bhushan Mandlik i/by Shrinis S. Patwardhan, for the Appellant

Mr. Kedar P. Lad, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondent.

2] This Second Appeal takes an exception to the judgment and order dated 15.09.2014, passed by District Judge-2, Kolhapur, thereby allowing Regular Civil Appeal No.300 of 2011 and setting aside the judgment and decree, passed by Joint Civil Judge Senior Division, Kolhapur in Special Civil Suit No.31 of 2017 dated 25.07.2001.

3] The said suit was preferred by the respondent herein seeking partition and separate possession of her 1/3rd share in the house property. The trial Court has dismissed the said suit, only on the ground of it being barred by limitation, in view of Article 110 of the Limitation Act, holding that in the notice issued in the year 1985 appellant's right

to the property was denied and the suit was not filed within 12 years thereafter.

4] The appellate Court has, however, set aside the said judgment and decree holding that in the Notice there was no specific demand for partition of the suit property and in view thereof, there cannot be any exclusion from the joint family.

5] It is pointed out by learned counsel for respondent also that though the trial Court has dismissed the suit, the trial Court has also accepted that there is absolutely no material to show that respondent has demanded partition by the said notice. However, the trial Court has held that the fact whether such partition was demanded or not is immaterial.

6] Learned counsel for respondent has in this respect drawn attention of this Court to the judgment of this Court in the case of **Kishore Narsingh, Hirala Shah -vs- Prakash Narsingh Shah, [2000 CJ (Bom) 384]**; wherein in paragraph No.21, it was categorically held that,

“Once the right to inherit the property devolves upon a person, then the burden of proving exclusion from enjoyment, as contemplated in Article 110 of Limitation Act, heavily rested upon the defendant. Mere non exercise of right by the plaintiff from the date of her marriage was no indication on the part of the plaintiff that she had given up

her rights in the suit property or that she was excluded by the defendants from the joint family property. The exclusion could be proved only, if there was clear and unequivocal demand of partition or share in the property by the plaintiff and it was denied and opposed by the person in possession. Since there was nothing on record to prove that any time between 12 years of institution of the suit, the plaintiff had demanded her share in the property and the same was denied by the defendants, objection regarding limitation could not be accepted”.

7] Here, in the case, as both the trial Court and the Appellate Court, on perusal of the notice, clearly held that there was no such demand of partition, the exclusion of respondent from enjoyment of joint family property, cannot be inferred. Hence, Article 110 of the Limitation Act had no application in the present case.

8] In view of this settled legal position, there is no substantial question of law raised or involved in this Appeal.

9] The Appeal, therefore, stands dismissed.

10] In view of dismissal of the Appeal itself, pending Civil Application therein no more survives and the same is disposed off accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]