IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

Second Appeal No. 0909 of 2016

District : Latur

1. Digambar s/o. Madhavrao Biradar,
(Died) through L.Rs.,

1A. Sheshyabai w/o. Digambar Biradar,
Age : 75 years,
Occupation : Household.

1B. Mahadev s/o. Digambar Biradar,
Age : 55 years,
Occupation : Agriculture.

1C. Gurunath s/o. Digambar Biradar,
Age : 53 years,
Occupation : Agriculture.

1D. Manmath s/o. Digambar Biradar,
Age : 49 years,
Occupation : Agriculture.

1E. Gunwant s/o. Digambar Biradar,
Age : 45 years,
Occupation : Agriculture.

1F. Hanmant d/o. Digambar Biradar,
Age : 42 years,
Occupation : Agriculture.

1G. Rajkumar s/o. Digambar Biradar,
Age : 38 years,
Occupation : Agriculture.

All R/o. Banshelki,
Taluka Udgir,
District Latur.

2. Nagnath s/o. Madhavrao Biradar,
Age : 67 years,
Occupation : Agriculture.

3. Vijaykumar s/o. Mallikarjun Biradar,
   Age : 57 years,
   Occupation : Agriculture.

4. Navnath s/o. Ramchandra
   @ Ramrao Biradar
   (Died) through L.Rs.,

   4A. Annapurnabai w/o. Navnath Biradar,
       Age : 55 years,
       Occupation : Household.

   4B. Shivhar s/o. Navnath Biradar,
       Age : 35 years,
       Occupation : Household.

   4C. Manmath s/o. Navnath Biradar,
       Age : 28 years,
       Occupation : Household.

5. Kashinath s/o. Ramchandra @
   Ramrao Biradar,
   Age : 62 years,
   Occupation : Agriculture.

   All R/o. Banshelki, .. Appellants
   Taluka Udgir, (Original
   District Latur. plaintiffs)

versus

1. Laxman s/o. Nagshetty Biradar
   (Died) through L.Rs.,

   1A. Yogiraj s/o. Laxuman Biradar,
       Age : 62 years,
       Occupation : Service.

   1B. Sidram s/o. Laxuman Biradar,
       Age : 67 years,
       Occupation : Agriculture.

   1C. Rachanna s/o. Laxuman Biradar
       (Died) through L.Rs.,

1C/A. Jaishree w/o. Rachanna Biradar,
Age : 57 years,
Occupation : Household,
R/o. Banshelki, Taluka Udgir,
District Latur.

1D. Smt. Sushilabai w/o. Madhavrao Biradar,
Age : 72 years,
Occupation : Household,
R/o. Maliwadi, Taluka Udgir,
District Latur.

2. Ramchandra s/o. Kashiram Biradar
(Died) through L.Rs.,

2A. Sangshetty s/o. Ramchandra Biradar,
Age : 52 years,
Occupation : Service.

2B. Vijaykumar s/o. Ramchandra Biradar,
Age : 47 years,
Occupation : Service.

Both R/o. Khatgaon,
Taluka Aurad,
District Bidar,
State Karnataka. .. Respondents
(Original
defendants)

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Mr. P.R. Katneshwarkar, Advocate, holding for Mr. M.G. Biradar, Advocate, for the appellants.

Mr. P.G. Godhamgaonkar, Advocate, for respondents no.1A, 1B, 1C/A and 1D.

Respondents no.2A and 2B served (Absent).

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23RD JULY 2019

ORDER :

01. Present appeal has been filed by the original plaintiffs challenging the concurrent judgment and decree passed in Regular Civil Appeal No. 56 of 2009 by the learned District Judge-2, Udgir, dated 19-11-2015, thereby dismissing their appeal and confirming the dismissal of their suit by judgment and decree in Regular Civil Suit No. 409 of 1998 by the learned Civil Judge (Junior Division), Udgir, dated 09-10-2009.

02. Present appellants - original plaintiffs had filed the said suit for declaration of ownership, perpetual injunction and recovery of possession.

03. Heard learned Advocate Mr. P.R. Katneshwarkar h/f. learned Advocate Mr. M.G. Biradar for the appellants. Heard learned Advocate Mr. P.G. Godhamgaonkar for respondents no.1A, 1B, 1C/A and 1D. Other respondents, though served, remained absent.

04. It has been vehemently submitted on behalf of the appellants, that both the Courts have not considered the facts as well as law applicable to the case. The plaintiffs were claiming ownership over the suit property which they had derived from their ancestor Bapurao. Bapurao had two wives namely, Mainubai and Iravatibai. Bhimrao was the son of Mainubai and Bapurao. Kashibai was the wife of

Bhimrao. Madhav, Shankar and Ramrao were the sons of Iravatibai and Bapurao. Out of them, Shankar died issueless. The plaintiffs are the heirs of Madhavrao and Ramrao. Defendant no.02 claims to be adopted son of Bhimrao and Kashibai. Kashibai expired on 12-11-1960. It had come on record, that there was no partition between Bhimrao and his step-brothers. It had also come on record, that the suit property was given by Bhimrao and Kashibai towards her maintenance for her lifetime only. Though later on there was a partition between Madhav and Ramchandra, the suit property was excluded as it was given to Kashibai only for maintenance. The plaintiffs had proved that defendant Ramchandra and Laxuman, original defendant no.01 had in collusion with each other prepared false and bogus documents and obtained some orders from the authorities. Plaintiffs were admittedly not party to the proceedings between defendants no.01 and 02. Therefore, decree in R.C.S. No.160 of 1974 was not binding on the plaintiffs. It was the contention of the plaintiffs, that they were in possession of the property as owner and when they were ousted by the defendants, they had filed the said suit for declaration of ownership, recovery of possession and permanent injunction. The oral evidence has not been properly considered by both the lower Courts which was self-explanatory as to how the property devolved on the plaintiffs. Therefore, substantial questions of law are arising in this case when both the Courts

have held that the suit was beyond the period of limitation when in fact, the period of limitation would start from the date of dispossession. [Parties are referred as per their nomenclature before the trial Court.]

05. Per contra, learned Advocate appearing for the respondents supported the reasons given by both the Courts below and submitted that the suit was beyond the period of limitation and plaintiffs had failed to prove that they ever had possession of the suit property with them.

06. Certain facts appear to have been admitted to both parties as they emerged from the pleadings as well as the testimony from both sides. The property initially belong to Bapurao but then plaintiffs themselves have come with a case, it was given to Bhimrao in a family arrangement. They have tried to say that instead of giving the property by metes and bounds to all the sharers, suit property was given to Bhimrao. When the plaintiffs contend so, they have not given as to what their predecessors got in the said family arrangement. Even if it is accepted that Bhimrao had got the said property in family partition, yet, it is also an admitted fact by the plaintiffs itself, that Bhimrao had given the suit property to Kashibai towards her maintenance, that means, during his own lifetime. The said action on his part appears to have never been challenged by

Madhav, Shankar and Ramrao. Thereafter, Kashibai expired on 12-11-1960. If at all any right would have accrued to the plaintiffs or their predecessors upon the death of Kashibai, then they ought to have exercised the said right immediately thereafter. However, it appears that no action including the action of getting their names mutated to the revenue record of the suit property was done by plaintiffs or their predecessors.

07. It is the case of defendants no.01 and 02, that defendant no.02 executed a *Batai Patra* in favour of defendant no.01 in the year 1961. In fact, it was tried to be contended that the arrangement regarding cultivation of the disputed property by defendant no.01 was made by Kashibai herself; but then after her demise, defendant no.02 continued the said arrangement. The confirmation about the same is *Batai Patra* dated 17-03-1961. On the basis of said document, defendant no.01 got his name mutated to the revenue record vide M.E. No.31 on 14-07-1963. The said entry has been confirmed by the higher authorities. Plaintiffs have not come with a case that they had ever tried to collect the revenue record and confirmed it as to whether their names are appearing in the same or not. Further, the evidence has come on record, that when dispute arose between defendants no.01 and 02, defendant no.01 filed R.C.S. No.160 of 1974. Even though plaintiffs were not

party to the said proceedings, yet, the fact is that the Revenue Court by its judgment dated 26-12-1985 had declared defendant no.01 as tenant in the suit property. The said fact was confirmed by the appellate authority on 12-04-1991. R.C.S. No.160 of 1974 was decreed by the learned Civil Judge (Junior Division), Udgir, on 14-08-1997. The reflection of these proceedings was in the revenue record and therefore, it is hard to believe that till 14-12-1998 i.e. when the present suit was filed, the plaintiffs had never come across or had knowledge about exercise of ownership rights by some other person. Therefore, both the Courts have rightly held that the suit was beyond the period of limitation.

08. The matter can be seen from another angle. Though the plaintiffs have admitted that Bhimrao had given the said property for maintenance to Kashibai, they have intentionally not given the date of creation of such maintenance right by Bhimrao in favour of Kashibai. Taking into consideration the date of death of Kashibai, it appears that the said right was given to her prior to 1956 i.e. coming into operation of Hindu Succession Act, 1956. After coming into operation of the said Act, in view of Section 14 thereof, Kashibai would have become exclusive owner of the said property and therefore, only her adopted son would have become owner of the property after demise of Kashibai. Plaintiffs have

not stated that at the time of giving the said property to Kashibai, Bhimrao had given it for limited purpose only. Therefore, when such stipulation or restriction was not put, it has to be considered that the said property was given to Kashibai exclusively towards her maintenance and then after she became exclusive owner, that property devolved on defendant no.02 after her demise. Plaintiffs will not then get any right, interest or title over the suit property.

09. Oral evidence that has been led by the plaintiffs has been discussed by both the lower Courts appropriately. Mere statements on behalf of their witnesses, that plaintiffs were possessing and cultivating the suit land is not sufficient taking into consideration the revenue record.

10. It appears from the record, that defendant no.02 in one of the proceedings i.e. R.C.S. No.283 of 1998 before Civil Judge at Bidar, had taken a stand that he is not the adopted son of Kashibai and in order to prove the said fact, the Advocate who was engaged by defendant no.02, was examined by the plaintiffs. Important point to be noted is that the earlier proceedings which were taken up at Udgir were contested by defendant no.02. Further, mere production of the written statement filed by defendant no.02 in some other matter to which

plaintiffs are not party and without giving an opportunity to explain the defendant no.02; plaintiffs cannot make use of such admission.

11. Another important point to be noted is that the revenue Court had declared defendant no.01 as tenant way back in the year 1985; but till PW 01 was examined, no action was taken on behalf of the plaintiffs to challenge the said decision. At the cost of repetition, it can be said that when the decisions taken by the Revenue Court were reflected on the 7/12 extract, it is hard to believe that the plaintiffs had no knowledge about the same till they filed the present suit.

12. Taking into consideration all the facts as well as law points involved in this case, it cannot be stated that both the courts below erred either in appreciating evidence or committed any error in law. No substantial questions of law are arising in this case, as contemplated under Section 100 of the Code of Civil Procedure, 1908.

13. In the light of above, the second appeal is disposed of as '**Not admitted**'.

(Smt. Vibha Kankanwadi)
JUDGE

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