

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

**SECOND APPEAL NO. 511 OF 2017
WITH
CIVIL APPLICATION 1488 OF 2015**

Ashok Yashvant Pusalkar ... Appellant
Versus

Shankar Mahadeo Jalgaonkar and others ... Respondents

.....

Mr. S.C. Mangale i/b Mr. Harshad Bhadbhade for the Appellant.
Mr. S. M. Raikar for Respondent Nos. 1, 6 and 7.

.....

CORAM : SANDEEP K. SHINDE, J.

DATE : 30th JANUARY, 2019.

P. C.:

1. This appeal is preferred by defendant No.4 against the decree of partition and cancellation of the sale-deed passed by the trial Court and confirmed in Regular Civil Appeal No. 123 of 2003.

2, I will refer parties to the appeal as per their status in the suit.

3. The suit was filed by Shankar against the legal representatives of his brother Narayan - who was defendant No.1 and sisters who are defendant Nos. 2 and 3. Narayan was the eldest in the family, who in August 1980 sold part of the suit of

the property (open land) to Yashwant Pusalkar. Defendant No.5 is the wife of Yashwant Pusalkar. Defendant No.4 (appellant herein) is the brother of Yashwant Pusalkar; whereas defendant Nos. 6 to 9 are heirs of Yashwant Pusalkar.

4. The trial Court decreed the suit and awarded half share in the suit property to the plaintiff-Shankar; and also set aside the sale-deed dated 20th August, 1980 as against the share of the plaintiff in the suit property. In Regular Civil Appeal which was preferred by the legal representatives of Narayan and the defendant No.4, the decree of the trial Court was confirmed, however, the appellate Court held sisters were also entitled to share in the suit property and as such, set aside the sale-deed as against the share of plaintiff and his sisters in the suit property.

5. It may also be stated that defendant No.4 - appellant before this Court is not the purchaser of the suit property.

6. With the assistance of learned Counsel for the appellant and respondent Nos. 1, 6 and 7, I have gone through the evidence and the judgments of the Courts below.

7. Admittedly, decree of partition has attained the finality against the purchaser of the suit property i.e. the wife of

Yashwant and his legal heirs who were the defendant Nos. 6 to 9. Likewise, the decree has attained the finality against the legal representatives of Narayan who was defendant No.1. The present appellant who was defendant No.4 was impleaded as proper party and not necessary party. When Court queried about appellant's locus to challenge the decree of partition, it is submitted that the suit property was developed by Yashwant Pusalkar and the present appellant.

8. In my view the appellant being not purchaser of the suit property, he had no locus to challenge the decree whereby the sale-deed executed by Narayan in favour of Yashwant (Appellant's brother) was set aside to the extent of plaintiff's and his sisters' share in the suit property.

9. That, even otherwise, both the Courts have rendered finding of facts consistent with the evidence on record which is not a perverse.

10. Learned Counsel for the appellant would however submit that the suit was barred by limitation, inasmuch as, the sale-deed was executed by Narayan in favour of Yashwant in August 1980 and suit was filed in August 1990.

11. The evidence on record discloses that the plaintiff had no knowledge and was unaware of execution of the sale-deed by his brother in favour of Yashwant. It is only in 1987-88 when Yashwant (brother of Appellant) started developing the subject property, suit was filed within three years therefrom. Thus, in my view the suit was not barred by limitation.

12. The appeal therefore does not give rise to any substantial question of law. The appeal is dismissed. In view of dismissal of appeal, civil application does not survive and it is disposed of accordingly.

(SANDEEP K. SHINDE, J.)