

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

SECOND APPEAL NO.171 OF 2015

1. Draupadi Bhikaji Bane

(Deceased)

Through her legal heirs

A. Gunaji Bhikaji Bane

An Others

... Appellants

Versus

Government of Maharashtra

Through Collector,

District Ratnagiri

And others

... Respondents

.....

Mr. Shashank C. Mangle for the Appellants.

.....

CORAM : S.C. GUPTE, J.

DATE : 8 NOVEMBER 2019

P. C. :

. Heard learned Counsel for the Appellants.

2 This Second Appeal challenges two concurrent judgments and orders passed by the courts below, namely, the judgment and order dated 1 December 2004 passed by the Civil Judge Senior Division at Ratnagiri in Regular Civil Suit No.61 of 1998 and the judgment and order dated 30 June 2014 passed by the District Court at Ratnagiri in Regular Civil Appeal No.25 of 2011. The deceased Appellant No.1,

who was the original plaintiff, had filed the present suit praying for (i) cancellation of division of the properties in accordance with a map prepared in Execution Application No.46 of 1957, (ii) declaration that the properties listed in the schedule annexed to the suit were of ownership of the plaintiffs and defendant nos.21 to 26, and (iii) delivery of possession of the suit properties accordingly.

3 The suit was dismissed both by the trial court and the first appellate court on three legal issues. The suit was held to be barred by the law of limitation, bad for non-joinder of necessary parties and properties, and not maintainable for want of service of notice under Section 80 of the Civil Procedure Code, 1908 (“Code”). The findings of the courts below on these issues are clearly in order. The plaintiff himself had claimed in the plaint that the disputed partition plan was placed before the plaintiff and others on 30 January 1979 and despite being dissatisfied with the partition in accordance with this plan, the suit came to be filed on 9 April 1998, that is to say, after 19 years from the date of accrual of the cause of action. The suit for declaration ought to have been filed within three years from the date of accrual of cause of action as per Article 58 of the schedule to the Limitation Act (through oversight referred to as Article 59 in the impugned order). So also, the original execution petition (Application No.46 of 1957) was filed in pursuance of a decree passed in Regular Civil Suit No.18 of 1929. Admittedly, the parties to that suit were not joined as parties to the present suit; the present suit was accordingly bad for non-joinder of necessary parties. Even as regards

the third issue of law, there was admittedly no notice to the Government of Maharashtra, who was defendant no.1 to the suit and whose officers had prepared the impugned plan and effected the impugned division of the suit property in the executed partition in accordance with Section 54 of the Code. Such notice being a mandatory requirement of law, the suit was liable to be dismissed for want of it.

4 The conclusions of the courts below are in accordance with law and do not give rise to any substantial question of law for the consideration of this court. Accordingly, there is no merit in the appeal. The Second Appeal is dismissed.

(S.C. GUPTE, J.)