

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

SA NO.115/2019

Savitribai @ Vatsala wd/o Rama Kumre and ors

..VS..

Saibai w/o Warlu Sidam and ors

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri S.G.Ramteke, Counsel for the Appellants.
Shri Rohit Joshi, Counsel for the Respondents.

CORAM : V.M.DESHPANDE, J.
DATED : JULY 25, 2019.

1. Heard learned counsel Shri S.G.Ramteke for the appellants and learned counsel Shri Rohit Joshi for the respondents.
2. Suit filed by plaintiffs/respondents for partition and separate possession was dismissed on the point of limitation. Plaintiffs/respondents preferred an appeal and the appeal was allowed. While allowing the appeal, learned Judge of Lower Appellate Court observed that in spite of not framing of issues in respect of limitation, learned Judge of Trial Court dismissed the suit on the point of limitation. Learned Judge of Lower Appellate Court could have in that event remanded the matter for the same. However, without doing so, learned Judge of Lower Appellate Court recorded a finding that the suit was within limitation and granted decree of partition.

3. In view of the aforesaid, in my view, the present second appeal needs admission and the said is **Admitted** on following substantial question of law:

Whether learned Judge of Lower Appellate Court was right in holding that the suit was within limitation and in absence of any point to that effect was formulated by learned Judge?

CAS No.1121/2018

1. Heard learned counsel Shri S.G.Ramteke for the applicants/appellants and learned counsel Shri Rohit Joshi for the non-applicants/respondents.

2. Today, this Court admitted the present second appeal. Admittedly, the the applicants/appellants, the defendants, are in possession of the suit property.

3. In this view of the matter, till the present second appeal is decided finally, there shall be Stay to the effect and operation of judgment and decree dated 11.10.2017 passed by learned 1st Ad hoc District Judge, Chandrapur.

4. The civil application stands allowed and disposed of accordingly.

JUDGE

!! BRW !!

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