

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

**SECOND APPEAL NO. 335 OF 2019
WITH
CIVIL APPLICATION NO. 224 OF 2019
IN
SECOND APPEAL NO. 335 OF 2019**

Babasaheb Mehabub Mulla (since decd. ... Appellant/Applicant
Through LRS.)

V/s.

Noor Hussein Mullani (since decd. ... Respondent
Through LRS.)

Mr. C.G. Gavnekar a/w. Mr. A.G. Gavnekar for the
applicant/appellant.

Mr. Prajakt M. Arjunwadkar for the respondent.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 3rd JANUARY 2020.

P.C. :

- . Heard respective counsel.
2. The appellant herein has challenged the Judgment and Order passed by the District Judge-1, Ichalkaranji dated 25th October 2018 in Regular Civil Appeal No. 11 of 2016, thereby confirming the Judgment and Order passed by the learned 4th Civil Judge Junior Division, Ichalkaranji dated 6th January 2016 in Regular Civil Suit No. 482 of 2000.

3. The facts in a nutshell are as follows:-

4. That, the appellant and the original owner of agricultural land bearing Gat No. 643 admeasuring area of 1H.25R situated at Mauje Pattankodoli, Tal.Hatkanangale, District-Kolhapur had entered into partnership agreement whereby it was agreed between the parties that each of the partners would pool Rs. 10,000/- each as a contribution towards the expenses of development of the suit property. The purported agreement was entered into in the year 1974. The period stipulated was for ten years. Unfortunately, the owner of the said suit property expired in the year 1983. In the year 1988 the legal heirs of the original owner issued a notice to the present appellants (original defendants) seeking restoration of the possession of the suit property. It was the case of the appellant that in fact they are tenants in the suit property and that they were paying Rs. 1,500/- to the predecessor in title regularly. Upon receiving the reply to the said notice the legal heirs of Noor Husain Mulani filed Regular Civil Suit No. 482 of 2000 seeking restoration of possession and dissolution of the said partnership. Taking into consideration, the submissions in the written statement the matter was referred to the Tenancy Court. The Court's below had held that the appellants herein are not the tenants of the predecessor in title. The said orders were confirmed by the High Court.

5. The suit had proceeded. The appellants herein had filed a written statement contending therein that the legal heirs of the defendant no.1 had contended in one line that **“the suit filed by the plaintiff's is barred by limitation”**

6. It is pertinent to note that there was no express plea of limitation. It was not contended as to the commencement of the period of limitation.

7. The suit was partly decreed by holding that the purported agreement was illegal and that the very induction of the appellants in the suit property on the basis of the said agreement is also illegal and the property belongs to the title holder of the property and therefore, deserves to be restored to the original landlord.

8. The said judgment was impugned before the Appellate Court. The Appellate Court had also framed issues and more particularly, the issue no. 4 which reads as ‘whether the suit was barred by limitation’ and the Appellate Court has answered the same in the negative. The learned Appellate Court has rightly held that initially the defendants denied the execution of such partnership and contended that they were tenants. The said plea was turned down by the Revenue Tribunal as well as the High Court. As far as the bar of limitation is concerned, the learned Appellate Court has assigned justifiable reason in paragraph 29 of the said judgment which reads as follows:-

“As to bar of limitation raised by learned Advocate Torse, it is to be noted that the plaintiffs are seeking possession of the suit property on the basis of their title. Such suit is to be brought within twelve years as per Article 65 of the Limitation Act from the day the defendant claims possession adverse to the plaintiff. But in this case the defendants are not claiming adverse possession, on the contrary they admitted the title of the plaintiffs to the suit property and claiming that they are tenants in the suit

property. Therefore, there is no question of bar of limitation”.

9. In fact, there is no question of bar of limitation. The pleadings of the defendants are inherently contrary to each other. Initially, it was their plea that there is no agreement and that they are tenants and thereafter, the contention was raised that the suit is barred by limitation. The very fact that the agreement itself was void ab-initio. The induction itself becomes illegal and therefore there was no question for the suit to be barred by limitation as Article 5.

10. The learned counsel for the appellant submits that the suit was instituted by the plaintiffs for dissolution of partnership and seeking restoration of possession and therefore, the suit was beyond limitation. Since the period of limitation is three years from the dissolution. Article 5 to the schedule of the Limitation Act contemplated the period of limitation reads as follows:-

	Description of suit	Period of limitation	Time from which period begins to run
5.	For an account and a share of the profits of a dissolved partnership	Three years	The date of the dissolution.

11. In fact, there is no specific pleading by the defendants admitting or denying dissolution of partnership but it was claiming the right of tenancy and therefore, the matter had to be referred to the Tenancy Court. Hence, there was no pleadings to that effect, there is neither any specific pleading before the Appellate Court and the same

does not deserves to the considered.

12. The reasons assigned by both the Courts are justifiable and calls for no interference. There is no substantial question of law involved hence, the Second Appeal as well as Civil Application stand dismissed.

(SMT. SADHANA S. JADHAV, J)