

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.508/2018

Vijaykumar Hindurao Pawar and another
..V/s..
Chotibee Sajjad Husain Peerzade and others

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

Court's or Judge's orders

Mr. Prasad P. Kulkarni, Advocate for the appellants.
Mr. I.M. Khiradi i/b Mohd. Saifal Mulla, Advocate for respondent No.1.

CORAM : N. W. SAMBRE, J.
CLOED FOR ORDER ON : 04.02.2020.
ORDER PRONOUNCED ON : 21.07.2020.

ORDER :

1] The respondent No.1 to the present appeal was the original plaintiff whereas rests of the parties to the appeal were defendants. The respondent No.1 on 25.02.2004 initiated a suit for partition, separate possession and for declaration that the sale-deed executed by the defendants in favour of defendant Nos.5 to 8 is illegal and not binding on the plaintiff.

2] One Peersaheb Patil died on 01.02.2001, who had a wife by name Gulshanbee to whom the plaintiff was born. The plaintiff claimed

that Peersaheb Patil had one keep / mistress by name Yedabai to whom defendant Nos.1 to 4 were born.

3] It was the claim of the plaintiff before the trial Court that the suit property consists of agricultural land and house property, are ancestral properties of deceased Peersaheb Patil and plaintiff had undivided share.

4] The suit was resisted by the defendant No.1 by filing written statement at Exh.32 wherein the point of limitation was raised. It is also claimed in the written statement that the oral gift *Hiba* was executed by deceased Peersaheb Patil in favour of defendant Nos.1 to 4. According to them, the gift was duly accepted.

5] As far as defendant Nos.2 to 4 are concerned, they have chosen not to appear before the trial Court. Defendant Nos.5 to 8 though appeared have not filed any written statement.

6] Amongst others, the defendant No.1 though raised a plea of limitation, trial Court has not framed issue of limitation. The trial Court decreed the suit by its order dated 07.04.2011. The present appellant i.e. original defendant Nos.7 and 8 feeling aggrieved,

preferred Civil Appeal No.181 of 2012. The appeal was partly allowed wherein the decree passed by the trial Court came to be modified. The declaration of the share of each of the plaintiff and defendant No.4 to the extent of 1/8th share, and to each of defendant Nos.1 to 3 to the extent of 1/4th share in agricultural land was ordered. Further declaration was ordered that the sale transaction dated 20th November 2003 in favour of the appellant is not binding.

7] Heard Mr. Prasad P. Kulkarni, learned counsel for the appellants. He would urged following question of law.

“Whether the suit claim is barred by limitation particularly in the light of limitation prescribed under Article 110 of the Limitation Act ?”

8] I have perused the judgments which are sought to be relied by the respective parties.

9] The point of limitation though raised before the trial Court, no issue was framed about the same, whereas the Appellate Court has brushed aside the same by a single line reason.

10] Apart from above, the point of limitation being a question of law which can be raised at any point of time. Hence, I deem it proper to consider the same.

11] Both the judgments have hardly dealt with the issue of limitation raised by the appellants and that being so, case for consideration is made out.

12] As such, the Second Appeal is admitted on following question of law.

“Whether the suit claim is barred by limitation ?”

13] **Admit.**

14] The respective counsels waives service of notice.

CIVIL APPLICATION NO. 652 OF 2018.

15] As the Second Appeal is already admitted and the appellants are in possession of the suit property by virtue of the sale-deed executed in their favour, their shall be stay to execution to the extent of such of the properties which was transferred to the

appellants. The application stands **allowed** to the above extent. No costs.

(NITIN W. SAMBRE, J.)

Kirtak