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

**SECOND APPEAL (ST.) NO.4611 OF 2016**

1. Sakharam Gangadhar Kedar
   since deceased thru Legal heirs

1a. Chandrabhan Sakharam Kedar & Ors. .... Appellants

Vs.

Shri. Madhukar Bapuji Kedar & Ors. .... Respondents

Mr. Vivek V. Salunke for the appellant.
Mr. Nikhil Patil a/w Dnyaneshwar Shewale i/by Prabhakar Jadhav for respondent no.1

**Coram : NITIN W. SAMBRE, J.**
**Date : 28th January, 2020**

P.C.:

1. This appeal is by original defendant to Regular Civil Suit No. 195 of 2001, wherein a decree for partition came to be passed by Civil Judge, J.D., Sinnar, confirmed in Regular Civil Appeal No. 6 of 2013.

2. The question of law, which is sought to be agitated is whether the suit claim is barred by limitation when Article 110 of the

Limitation Act prescribes for limitation of 12 years, whereas the respondent-original plaintiff in 1965 has relinquished their claim in favour of the appellant.

3. If the aforesaid submissions are appreciated, the case of the appellant raised by the appellant is that of the relinquishment of share by the respondent-plaintiff. Reliance is placed on an application by the respondent to the revenue authority on 27th January, 1965 to prove the claim of relinquishment which has resulted into removing the names of respondents/plaintiffs from the revenue record, as a consequences denying share in the suit property by the appellant.

4. The said application to Revenue authorities is produced at Exhibit 101, however, both the Courts below have recorded the finding of fact that the contents of said documents are not proved.

5. Apart from above, the fact remains that the Court has noticed that the value of the suit property is more than Rs.100/- and as such relinquishment should have been by way of registered document that too for consideration, which is conspicuously absent.

6. Reliance placed by the appellant on the document, Exhibit 101 i.e. an application for removing name of the respondent-plaintiff from the record of rights and accordingly carrying out mutation entry in favour of the appellant will be of hardly any assistance as such revenue entries are always subject to outcome of civil proceedings.

7 Article 110 of the Limitation Act has provided in the Schedule to Limitation Act provides for limitation of 12 years, which starts running from the date of exclusion become known to the plaintiff. In the case in hand, it is for the appellant to demonstrate that the exclusion was known to the plaintiff on 27th January 1965. Just because the document Exhibit 101 is produced on record that by itself is not entitled to this Court to infer that the inclusion from the property was known to the plaintiff in 1965.

8. In the aforesaid background, the case of the respondent-plaintiff is that of gathering knowledge in the year 2001 by the respondents-plaintiffs i.e. just before initiation of the suit after denial of share in the ancestral property is very much justified.

9. The suit claim as such is barred by limitation is rightly answered against the appellant-defendant.

10. No substantial question of law is involved, which warrants interference.

11. Second Appeal is dismissed.

**( NITIN W. SAMBRE, J. )**