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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.673 OF 2016
ALONGWITH
CIVIL APPLICATION NO.1682 OF 2016**

Gopal Laxman Mankar and Anr. Appellants.

V/s

Manda Arun Mankar Respondents.

Mr. Tejpal S. Ingale for the Appellants.

Mr. Joel Carlos for Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 21, 2020

P.C.:-

1] Since Appellant No.1 has amicably settled the dispute, appeal is not pressed at the best of Appellant No.1.

2] Appellants preferred Regular Civil Suit No.1498 of 2001 for declaration and permanent injunction in relation to the suit property and also claimed that Sale Deed dated 19/08/1997 which was executed by mother of the Appellants Rakhmabai was not to be acted upon as same is bogus and not binding on them. Suit came to be decreed by the learned Trial Court vide judgment and order dated 9/1/2004 whereby declaration is made that Sale Deed executed

between late Rakhmabai and Defendant is formal, bogus, null and void and not binding on them. In an appeal preferred under Section 96 by Defendant, said decree came to be reversed and judgment of the Trial Court came to be set aside. As such, this second appeal.

3] The submission of Mr. Ingale, learned Counsel for Appellant No.2 is, lower Appellate Court committed an error by recording finding that suit was barred by limitation as it was preferred beyond the period of limitation prescribed under Article 58 of the Limitation Act. So as to substantiate his claim, he submits that revenue proceedings were initiated by the Appellants in relation to mutation entry and as such after culmination of said revenue proceedings, suit came to be filed.

4] Further contention of Mr. Ingale is, suit property was joint family property, purchased out of income derived from enjoyment of joint family and that being so, Sale Deed executed is not binding.

5] The claim is opposed by the learned Counsel for the Respondent.

6] Fact remains that suit is for declaration and injunction based on alleged Sale Deed dated 19/8/1997. Suit was initiated in 2001 and Article 58 prescribes limitation of three years that too from the date of knowledge of registration of such Sale Deed. In RTS proceedings, relief is sought on the basis of Sale Deed and that being so lower Appellate Court has rightly inferred that in view of knowledge, Appellants have failed to bring action before competent civil court within the limitation prescribed. The said findings are based on appreciation of pleadings and evidence of respective parties. Once it has been declared that suit was barred by limitation, further claim of the Appellants has been rightly negated by the first appellate court.

7] As such, second appeal is devoid of merits and same is dismissed. As a consequence, pending applications, if any, stand dismissed.

(NITIN W. SAMBRE, J.)