

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 86 OF 2017
WITH
CIVIL APPLICATION NO. 868 OF 2014
IN
SECOND APPEAL NO. 86 OF 2017**

Shri Vithoba Bhika Bhambhure ... Appellant/Applicant
V/s.

Smt. Tanhabai Khandu Bhambhure and ... Respondents
Ors.

Mr.T.D. Deshmukh for the appellant/applicant.
None for the respondents.

**CORAM : SMT. SADHANA S. JADHAV, J
DATED : 16th JANUARY 2020.**

PC. :

. The appellants herein impugned the judgment and decree dated 21st November 2012 passed by the District Judge, Pune in Civil Appeal no. 866 of 2005, thereby upholding the judgment and decree passed by Civil Judge Junior Division, Khed, District-Pune in Regular Civil Suit No. 126 of 2000.

2. The substantial questions of law as framed by the learned counsel for the appellant are (B) and (C) read as under:-

“(B).....Whether both the learned Courts below are justified in law by holding that the suit for partition filed by Respondent Nos. 1 to 4 is within the period

of limitation, more particularly when the predecessor in title of Opponent Nos. 1 to 4 viz. Deceased Khandu admittedly passed away in the year 1950 and present suit for partition has been filed in the year 2000?”.

“(C).... Whether both the learned Courts below are justified in law by holding that the suit for partition filed by Respondent nos. 1 to 4 is within the period of limitaion, more particularly when it has been admitted by the Respondent Nos. 1 to 4 that partition was denied by the Applicant in the year 1950 and the suit has been instituted in the year 2000”.

3. The facts of the case is that the appellants herein happened to be defendants in Regular Civil Suit No. 126 of 2000. The Plaintiffs had submitted genealogy of the family tree in order to substantiate their claims for partition and possession. The suit properties are ancestral properties of Tatyaba Vithoba Bhambure who died on 25th February 1950, leaving behind him two sons namely Bhika and Khandu. The plaintiffs happen to be the legal heirs of Bhika whereas the Defendant no. 1 is the wife of Khandu and the others are the legal heirs. It is contended that on 26th June 2000 the plaintiffs had demanded partition in the ancestral properties which was denied to them and therefore, they were constrained to file the suit.

4. The learned counsel submits that the First Court has committed a grave error in answering issue no. 2 in the negative. The issue no. 2 is “Whether the suit is barred by limitation”.

5. The only contention raised by the defendants before the First Court was that the predecessors in title, of the Defendants had never claimed partition during his life time. The defendants have not brought on record any document or any material to show that the plaintiffs were excluded from their ancestral properties.

6. The Appellate Court has also answered the issue of limitation in negative. The defendants have placed implicit reliance upon an omnibus admission of the plaintiffs that initially they had claimed partition, within 2 to 3 years after the demise of Khandu. However, the same was denied to them and therefore, according to the learned counsel the suit ought to have been instituted within 12 years from the date of knowledge.

7. Since it was the family arrangement and there is casual admission that initially the demand was made, cannot be said to be an admission. In fact, the period of limitation would commence from the date when the plaintiffs have gained knowledge that they are excluded from inheriting ancestral property.

8. In view of this, there is no reason for admitting the appeal on any of the substantial questions of law as framed by appellants herein and both the substantial questions of law need to be answered in the negative. Hence, the appeal being sans merits stands dismissed. The civil application is accordingly disposed of.

(SMT. SADHANA S. JADHAV, J)