

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

SECOND APPEAL NO.427 OF 2020

Shaikh Bashir S/o Shaikh Hussain,
Age-72 years, Occu:Agri.,
R/o-Nalewadi, Taluka-Ambad,
District-Jalna

**...APPELLANT
(Orig. Defendant)**

VERSUS

- 1) Shaikh Yasmin S/o Shaikh Hasan,
Age-57 years, Occu:Agri.,
R/o-Churnmapuri, Taluka-Ambad,
District-Jalna,
- 2) Shaikh Mithu S/o Shaikh Hasan,
Age-55 years, Occu:Agri.,
R/o-Churnmapuri, Taluka-Ambad,
District-Jalna,
- 3) Shaikh Yunus S/o Shaikh Hasan,
Age-61 years, Occu:Agri.,
R/o-Churnmapuri, Taluka-Ambad,
District-Jalna,
- 4) Shaikh Kaisar S/o Shaikh Hasan,
Age-50 years, Occu:Agri.,
R/o-Churnmapuri, Taluka-Ambad,
District-Jalna,
- 5) Hafijanibee W/o Shaikh Hasan,
Age-78 years, Occu:Agri.,
R/o-Churnmapuri, Taluka-Ambad,
District-Jalna.

**...RESPONDENTS
(Orig. Plaintiffs)**

...
Mr. Sandeep D. Munde Advocate for Appellant.
Mr. R.R. Mantri Advocate for Respondents No. 1 to 5.
...

CORAM: ANIL S. KILOR, J.

DATE : 7th APRIL, 2021

ORAL ORDER :

1. The appellant feeling aggrieved by the Judgment and decree dated 5th February 2020 passed by the District Judge-2, Jalna in Regular Civil Appeal No. 64 of 2014, partly allowing said Regular Civil Appeal to the extent of recovery of the possession, preferred the present appeal.
2. I have heard learned counsel appearing for the respective parties.
3. The brief facts of the present case are as follows (parties are referred to as per their status before the trial Court):
4. The plaintiffs filed a suit being Regular Civil Suit No. 160 of 2007 in the Court of Civil Judge, Junior Division, Ambad for recovery of possession of the suit property, namely, Block No. 22, admeasuring 2 Acres i.e. 81 R. situated at village Churmapuri, Taluka-Ambad. It is the case of the plaintiffs that the suit property was owned by one Shaikh Hasan and plaintiffs are the legal heirs of Shaikh Hasan. It is the further case of the

plaintiffs that the defendant prepared false document on 21st February 1989, by taking disadvantage of illness of Shaikh Hasan and thereafter in collusion with the revenue authorities, mutated his name in the revenue record and acquired possession of the suit property. The plaintiffs claim title over the suit property being legal heirs of Shaikh Hasan, by way of succession.

5. The defendant filed his written statement and accepted the ownership of Shaikh Hasan, however, he came up with a case that he paid Rs.10,000/- to Shaikh Hasan and thereupon Shaikh Hasan had executed a partition deed on a stamp paper of Rs.5/-, which was the basis to record the name of the defendant in revenue record and as such he got the title as regards the suit property.

6. The defendant also raised a ground of limitation and stated that his name was recorded in the revenue record in the year 1989 and since then he is continuously in possession of the suit property and the suit came to be filed in the year 2007 and not within 12 years after the defendant came in possession in the year 1989.

7. The learned trial Court, after scrutinizing the oral as well as documentary evidence available on record and after considering the

relevant provisions of law, dismissed the suit. The learned trial Court while dismissing the suit held against the plaintiffs on the point of limitation and on the point of partition vide Judgment and decree dated 28th February 2014.

8. Feeling aggrieved by the said Judgment and decree, the plaintiffs preferred appeal, which came to be partly allowed vide impugned Judgment and decree dated 5th February 2020, and thereby the suit was decreed to the extent of recovery of possession. The said Judgment and decree is under challenge in the present appeal.

9. Shri Munde, learned counsel appearing for the appellant / defendant submits that the learned trial Court has rightly held that the defendant became owner of the suit property after partition, however, the learned lower appellate Court has erroneously reversed the said finding.

10. It is submitted that the learned lower appellate Court has not properly considered the issue of limitation in view of the admitted facts that in the revenue record the name of the defendant was recorded in the year 1989 and the suit was filed in the year 2007. Thus, the suit was filed beyond period of 12 years prescribed under Article-65 of the Limitation Act.

11. It is further submitted that the suit was simpliciter for possession without seeking declaration as regards title and therefore, the suit simpliciter for possession is not maintainable.

12. Per contra, Shri Mantri, learned counsel appearing for respondents / plaintiffs supports the impugned Judgment and decree and prays for dismissal of the appeal.

13. To consider the rival contentions of the parties, I have perused the record and the Judgments of both the Courts below.

14. It is clear from the record that the defendant is not disputing the ownership of Shaikh Hasan, however, it is the case of the defendant that he derived the title in respect of the suit property by way of partition which was executed by Shaikh Hasan on a stamp paper of Rs.5/- after receiving Rs.10,000/- from the defendant.

15. It is a settled position of law that the partition of property takes place as and when any immovable ancestral or parental property is jointly owned and where either party or both parties intend to get their shares in property, separated.

16. In the case in hand, in absence of the case of the defendant that the suit property is an ancestral property and he has a share in the suit property and in lieu of said right of the defendant in the suit property the partition deed was executed by Shaikh Hasan, the transfer of title of suit property by way of partition deed cannot be accepted as legal.

17. It is a settled law that transfer of title is permissible only by way of registered document and effect of non-registration of document is hit by Section 49 of the Registration Act 1908, which provides that no such document shall operate to create, declare, assign, limit or extinguish any right, title or interest on immovable property.

18. In the present matter admittedly no document has been produced by the defendant, more particularly, any registered document transferring title of the suit property by Shaikh Hasan in favour of the defendant.

19. In absence of dispute in respect of ownership of Shaikh Hasan and in view of the fact that after the death of Shaikh Hasan the plaintiffs have succeeded the title of the suit property by way of succession, on failure of the defendant to prove his title, it can safely be said that no cloud is created over the title of the plaintiffs in the present matter and in absence of any cloud over the title of the plaintiffs, the suit simpliciter for

possession is maintainable as law laid down by the Hon'ble Supreme Court of India in a case of *Anathula Sudhakar vs. P. Buchi Reddy (dead) By LRS. and others*¹. In the circumstances, this Court does not find any fault in filing of suit by the plaintiffs simpliciter for possession, in the present dispute.

20. As regards the limitation, under Article-65 of the Limitation Act, the period of 12 years starts running when the possession of the defendant becomes adverse to the plaintiffs. Admittedly, no case of adverse possession has been pleaded by the defendant in the present matter and therefore, the suit filed by the plaintiffs is well within limitation. Thus, the contention of the defendant that the suit is barred by limitation cannot be accepted and the same is rejected.

21. In view of the findings recorded herein above, I do not find any substantial question of law involved in the present matter and I also do not find any perversity in the findings recorded by the learned lower appellate Court.

22. Accordingly, the Appeal is dismissed. No order as to costs.

1 (2008) 4 Supreme Court Cases 594

23. At this stage, Shri Munde, learned counsel appearing for the appellant prays for extension of stay, granted by this Court vide order dated 18th December 2020 as regards possession, for six weeks.

24. Shri Mantri, learned counsel appearing for respondent opposes the said prayer.

25. Since this Court has granted interim relief as regards possession and the same is continued since more than three months, no prejudice would be caused to the respondent if the same is continued for another six weeks. Accordingly, interim relief is continued for another six weeks from today.

26. Pending Civil Application No. 8517 of 2020 is also disposed of.

[ANIL S. KILOR, J.]