

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Second Appeal No. 523 of 2018

Sheikh Mehboob Sheikh Sakur and others

Versus

Aayesha @ Ashabi Majit Sheikh

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.K. Thakkar, Advocate for the Appellants.

Shri Bhushan Dafle, Advocate for the Respondent.

CORAM : ANIL S. KILOR, J.

DATED : 10th DECEMBER, 2021.

In this appeal, a challenge is raised to the judgment and decree dated 08.03.2018 in Regular Civil Appeal No.53 of 2015 passed by the District Judge-2, Warora, District Chandrapur, dismissing the appeal and upholding the judgment and decree dated 22.01.2014 in Regular Civil Suit No.112 of 2011 passed by the 2nd Joint Civil Judge Junior Division, Warora, thereby declaring that the plaintiff has 1/6th share in the suit property and defendant Nos.1 and 2 have 1/3rd share each, whereas defendant No.3 has 1/6th share.

2. The brief facts of the present case are as follows: (Parties are referred to as per their status before the trial Court)

3. The plaintiff filed the suit for partition and separate possession claiming thereby that the mother Jaibunbi Sheikh Sakur owns property being old survey No.185, new No.315, admeasuring 7 H 50 R situated at

village, Panzurni, Taluka Warora, District Chadrapur and after the death of mother on 22.08.1996, the plaintiff being her daughter has 1/6 share in the suit property. The plaintiff is the sister of defendant Nos.1 to 3.

4. The learned trial Court after considering the oral as well as documentary evidence produced by the plaintiff decreed the suit in favour of the plaintiff and thereby held that the plaintiff has 1/6th share in the suit property.

5. The defendants Nos. 1 to 3 feeling aggrieved by the judgment and decree dated 22.1.2014 preferred Regular Civil Appeal No.53 of 2015 before the District Judge-2, Warora, District Chandrapur, which came to be dismissed vide judgment and decree dated 08.03.2018. Hence, this appeal.

6. I have heard learned counsel for respective parties.

7. Shri Thakkar, learned counsel for the appellants submits that the mutation entry in respect of the suit property was taken in the year 1996 in the name of defendant Nos.1 and 2. However, the suit was filed in the year 2011 i.e. after 15 years and as the suit is time barred both the Courts-below on this count, ought to have dismissed the suit.

8. Shri Dafle, learned counsel for the respondent/original plaintiff, supports the impugned judgments and decree of both the Courts-below and submits that the defendants are not entered into the witness-box to prove their case on limitation. It is submitted that the point of limitation is mixed question of fact and law.

9. He submits further that the suit was well within the limitation and it was rightly decreed by both the Courts-below. By arguing so, Shri Dafle, learned counsel for the respondent prays for dismissal of the appeal.

10. To consider the rival contentions of the parties, I have gone through the record and also perused the judgments and decree passed by both the Courts-below.

11. On perusal of the record, it is revealed that the point of limitation was never raised before the both the Courts-below and it has been raised first time in this appeal. Moreover, even if the case of the defendants is considered that the mutation entry was taken in the year 1996, no evidence has been brought on record to show that the plaintiff was aware of said mutation entry. Further more, no evidence in that regard was led by defendants.

12. In absence of any material to show that having knowledge about mutation entry, the suit was not filed within time prescribed in law, it cannot be said that the suit was time barred.

13. In that view of matter, I do not find any substantial question of law is involved in the present appeal.

14. The appeal is **dismissed**.

15. No order as to costs.

[ANIL S. KILOR, J.]

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DOMAJI THAWRE
Signing Date:16.12.2021
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