

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.78 OF 2019

ANTONIO MILTON CAMARA
AND ANR.

... Appellants

Versus

KESHAV SINAI KUNDE AND CO.
AND ANR.

... Respondents

Mr. Rohan Desai, Advocate for the Appellants.

CORAM: M. S. SONAK, J.

DATED : 7th OCTOBER 2022

P.C.:

1. Heard Mr. Rohan Desai, learned counsel for the Appellants.
2. This Second Appeal questions the concurrent judgments and decrees made by the trial Court and the First Appellate Court dismissing the Appellants' (original Plaintiffs) suit and the appeal seeking a declaration that the sale deed dated 12.04.1975 was null and void because the same was never executed by the Appellants.
3. Mr. Desai proposes the following substantial questions of law:
 - (1) Whether the Ld. Appellate Court is right in dismissing the Appeal filed by the Appellants when the suit filed by the Appellants No.1 and 2 was not barred by limitation as the Sale

Deed was executed on 12/04/1975 and the suit was filed on 19/08/2004, which was immediately done after coming to the knowledge of the Appellants?

(2) Whether both the Courts below have patently gone wrong in casting the burden of proof on the Appellants and have misread the evidence in holding that the Appellants have not shown that the Appellants 1 and 2 (Plaintiffs) were aware of the said Sale Deed?

(3) Whether the findings reached by both the Courts below are perverse inasmuch as they are not germane or relevant or are extraneous to the fundamental issues?

4. Mr. Desai submits that there was no clear evidence on record about the service of summons in Special Civil Suit No.67/1975. He submits that the burden of proving that the suit was instituted within the limitation was wrongly cast upon the Appellants/Plaintiffs. He submits that the suit was filed after the Appellants/Plaintiffs acquired knowledge of the sale deed in the year 2004. Hence, the suit was within the prescribed period of limitation.

5. Mr. Desai submits that the finding about the sale deed being executed by the Appellants suffers from perversity, there is no evidence in support of such a finding. He submits that the two Courts unduly construed the pleadings in a strict or pedantic manner.

6. For the aforesaid reasons, Mr. Desai submits that this appeal be admitted and eventually even allowed.

7. Upon due consideration of Mr. Desai's contention and upon perusing the records and the impugned decrees, I am satisfied that no case is made out to entertain this Second Appeal *inter alia* considering the restrictive parameters of Section 100 of the Civil Procedure Code.

8. As noted earlier, there are concurrent decrees in this matter. The decrees are based on the evaluation of evidence on record. This is not a case of "*no evidence*" or taking into account the irrelevant evidence or exclusion of relevant evidence.

9. On the issue of limitation, the two Courts have found that the Respondents/Defendants had instituted Special Civil Suit No.67/1975, in which there was reference made to this sale deed of 12.04.1975. The two Courts have found that the records in the said suit reveal that the Appellants/Plaintiffs were duly served with summons. Even in the cross-examination, Appellant No.1 was not very categorical about not receiving the summons. Thus, based upon the evaluation of evidence on record, the two Courts have concurrently held that the Appellants/Plaintiffs were aware of this sale deed way back in the year 1975 itself. Considering such a finding which is not found to be perverse, the present suit instituted on 19.08.2004 was indeed barred by law of limitation. The two Courts have not erred in placing the burden upon the Appellants/Plaintiffs. The Limitation Act in fact casts a duty on the Courts to examine whether the suit was indeed instituted within the prescribed period of limitation, whether or not the limitation was set as a defence. Thus,

the substantial question of law relating to the law of limitation does not arise in this Second Appeal.

10. The two Courts have held that there are no pleadings in support of wild allegations of impersonation and fraud. The Appeal Court has adverted to the provisions of the Order VI Rule 4 of the Civil Procedure Code and the requirements of pleading material particulars where the allegations of fraud, undue influence etc., are made. The Appeal Court has also referred to the decision in *Bishundeo Narain and another Vs Seogeni Rai and Jagernath*¹, in which it is held that the parties pleading fraud etc., must set forth full particulars and general allegations are not sufficient.

11. Despite deficient pleadings, the two Courts have considered the evidence placed on record by the Appellants/Plaintiffs. They have found, quite correctly that even this evidence was far from sufficient to bring home the charge of fraud, impersonation etc. The two Courts have noted that the Appellants/Plaintiffs did not take steps to bring forth the evidence of any handwriting expert though, they disclaim their signatures on the sale deed. An application was made to the trial Court to refer the documents to a handwriting expert. After the same was rejected, the Appellants/Plaintiffs did approach this Court but without success. This Court had observed that it is always open to the Appellants/Plaintiffs to get the documents examined and produce the

¹ AIR 1951 SC 280

evidence of an expert. This opportunity was not availed of by the Appellants/Plaintiffs.

12. Considering the above circumstances, none of the substantial questions of law now raised by Mr. Desai arise in this appeal.

13. This Second Appeal is therefore liable to be dismissed and is hereby dismissed. There shall be no order for costs.

M. S. SONAK, J.

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