

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

SECOND APPEAL NO.484 OF 2016

Smt. Antakala Sudam Athawale,
Aged about 75 years,
Occupation : Household,
R/o. Khirgavhan, Tq. Anjangaon Surji,
District : Amravati.

..... APPELLANT
(Ori. Plaintiff)
On R.A.

// VERSUS //

1. Rajendra s/o Janardan Athawale,
Aged about 46 years,
Occupation : Cultivator,
R/o. Khirala, Tq. Anjangaon Surji,
District : Amravati.
2. Balu S/o Bhimrao Hambarde,
Aged about 45 years,
Occupation : Labourer,
R/o. Umri Bazar, Tq. Anjangaon Surji,
District : Amravati.

.... RESPONDENTS
(Ori. Defendants)
On R.A.

Mr. S. U. Nemade, Advocate for appellant.
Mr. Anand Deshpande, Advocate for respondents.

CORAM : AVINASH G. GHAROTE, J.
DATED : 19/09/2022

ORAL JUDGMENT :

1. Heard Mr. Nemade, learned counsel for the appellant and
Mr. Deshpande, learned counsel for the respondents.
2. The second appeal was admitted for final hearing on the
following substantial question of law:

“Whether the dismissal of the suit by the appellate Court as being barred by limitation is on a proper consideration of the provisions of Article 65 of the Limitation Act, 1963 ?”

3. Mr. Nemade, learned counsel for the appellant submits, that both the Courts have answered the issue regarding the allotment of land in question and delivery of its possession in favour of the appellant. So also the issue regarding the alleged sale deed dated 6.8.2004 executed by the defendant/respondent no. 2 in favour of defendant no.1 being illegal on account of there being no right vested in the defendant no.2 *vis-a- vis* the property in question has also been answered in favour of the appellant. The learned trial Court by the judgment dated 2.5.2015 (pg. 44) has granted a decree for possession in favour of the appellant/plaintiff. However, the learned Appellate Court by the impugned judgment 29.6.2016, has reversed it only on the ground that the suit by the plaintiff was not within limitation, on the ground that since the Grampanchayat entries, indicated possession of the suit property by the defendant no.2 since 1992-93, the suit filed by the plaintiff on 28.9.2010, was barred by limitation on the plea that Article 65 of the Limitation Act, was applicable.

4. Since both the Courts have answered the question of title and possession of the appellant/plaintiff on the basis of the allotment letter dated 11.9.1972, in the affirmative and so also that the appellant/

plaintiff had constructed the house within a period of six months from the date of allotment and there is no challenge to this on behalf of the defendants these issues cannot be gone into. The only contention is whether the suit as filed by the plaintiff/appellant was barred by limitation. In my considered opinion, finding in this regard rendered by the learned Appellate Court is clearly not sustainable in law for two reasons. (1) the plaintiff, was allotted the land in question on 11.9.1972, when she was not married. After marriage she had shifted to her matrimonial house at Khirgavhan in Daryapur Tahsil Dist. Amravati, and was residing there. That apart, the learned Appellate Court itself, has observed that the plaintiff had made a complaint upon learning of the illegal occupation of the defendant no.2, in the year 2006-07, and the suit having been filed on 28.9.2010, could not be said to be beyond the period of limitation. In fact, it has come on record that the defendant no.1/ respondent no.1 was claiming title under a sale deed dated 6.8.2004, alleged to have been executed in his favour by the respondent no.2/defendant no.2 when admittedly as found by the both the Courts below the defendant no.2/respondent no.2 had no right whatsoever in the land in question. The sale deed Exh. 62 was *prima facie* illegal the same being without any legal authority whatsoever. Thus, even otherwise, the claim of possession by the defendant no.1, could not have gone prior to 2004 and the suit having been filed on 28.9.2010 was

clearly within the time as stipulated in the Article 65 of the Limitation Act. That being the position, the impugned judgment by the learned Appellate Court dated 29.6.2016, cannot be sustained. The same is hereby quashed and set aside. No other point was argued.

5. The substantial question of law as framed on 12.7.2017, is answered accordingly, considering which, the judgment of the learned first Appellate Court is quashed and set aside and the judgment of the learned trial Court is hereby restored.

6. Appeal is accordingly allowed. No costs.

(AVINASH G. GHAROTE, J)

Sarkate.