

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.227 OF 1995

Gafoorbhai Mahambhai Maniyar
Age. 68 yrs, Occ. Business,
R/o. H.No.2508, Tambhtkar Galli,
Ahemadnagar.

...Appellant

Versus

1. Badashab Wali Mohmad Maniyar,
Dead through his legal heirs
- 1.A) Ismail Hadshah Maniyar,
Age.40 yrs, Occ. Trader (Business).
- 1.B) Raju Nadshah Maniyar,
Age.40 yrs. Occ. Nil,
Both R/o Paridkha Masjid,
Anandi Bazar, Ahemadnagar.
2. Ibrahim Hasan Maniyar
Died through his legal heirs,
- 2-A) Kadar Ibrahim Maniyar
- 2-B) Hasan S/o Ibrahim Maniyar
- 2-C) Mohd. s/o Ibrahim Maniyar
- 2-D) Yunus s/o Ibrahim Maniyar

All above aged Major, Occ : Business
R/o. Waghapur, Tq : Purandar,
Dist. Pune.

3. Ganibhai Hashanbhai Maniyar
Age. 50 yrs, Occ. Business,
R/o Eadshahkhan's Wada,
Tambatkar Galli, Ahemadnagar.

...Respondents

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Advocate for Appellant : Mr. V S Bedre.
Advocate for Respondent Nos.1A & 1B : Mr. A.S. Bajaj

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 30, 2023

ORAL JUDGMENT :-

1. Heard the learned counsel for the appellant and learned counsel for the respondents.

2. The parties are governed by the Muslim Law. The present appellant/plaintiff was the son of one Mahambhai Maniyar. His father died. During his lifetime, the father had sold the suit lands by registered sale deeds in 1951 and 1969. The appellant came with a case that in the year 1979, he learnt that his father was died and then he made the enquiry and learnt about the sale deeds in question. He filed a suit in December 1980 for declaration that the sale deeds executed by his father were not binding to the extent of his half share.

3. An objection was raised that the suit was not tenable as there is no concept of joint family or of right by birth in Momedan Law. He has no right to claim share during the lifetime of the father. That apart, the suit was barred under Article 58 of the Limitation Act. Hence, both Courts have correctly dismissed the suit.

4. The following substantial questions of law was framed ;
‘The question of limitation is substantial question of law.’

5. Learned counsel for the appellant would argue that the question of limitation is a mixed question of fact and law, therefore, that issue ought not to have been decided as the preliminary issue. However, no such substantial questions of law was formulated at the time of the admission of second appeal. That apart, the record

reveals that the parties had led the evidence on the limitation issue. After appreciating the evidence on the limitation, the Court has formed an opinion that the suit is hit by Article 58 of the Limitation Act. The suit was filed after around 30 years of the first transaction and 20 years after the second transaction. The property was transferred by registered document of sale. Admittedly, the parties are governed under the Momedan law where the concept of joint family or right by birth is not recognized. Considering the cause of action, the suit was apparently barred by limitation under Article 58 of the Limitation Act. There is nothing on record to point out that the suit filed by the present appellant was within limitation. Hence, the substantial questions of law is answered accordingly. The appeal stands dismissed. No order as to costs.

6. Rule stands discharged.

7. R and P be returned to the Court of learned Joint Civil Judge Junior Division, Ahmednagar.

(S.G. MEHARE, J.)