

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

SECOND APPEAL NO. 221 OF 2022
WITH CA/6728/2022 IN SA/221/2022

WALHA MAHADU BAGUL AND ANOTHER
VERSUS
PUNDLIK BUDHA BAGUL DIED
LRS. INDUBAI AND OTHERS

...
Advocate for Appellants : Mr. H.P. Randhir
Advocate for Respondent No. 5 : Mr. S.H. Jadhav
...

CORAM : R.M. JOSHI, J.
DATE : 16th March, 2023

PER COURT :

1. Heard.
2. This appeal is filed by original defendants being aggrieved by judgment and decreed dated 10th December, 2021, passed by learned District Judge – 3, Jalgaon, District Jalgaon, in Regular Civil Appeal No. 125 of 2014, confirming judgment and decree dated 03rd May, 2014, passed by learned Civil Judge Junior Division, Pachora, District Jalgaon, in RCS No. 18 of 2008.
3. Learned counsel for the appellants states that learned Trial Court as well as first appellate Court have committed error in decreeing the suit without considering the fact that the suit is

filed beyond the period of limitation. He contends that in the written statement, there is specific averment made in respect of cause of action by denying the contention of the plaintiffs regarding demand of partition on 01st January, 2008 and issuance of notice on 03rd January, 2008. He further submits that there was oral partition and in view of the said oral partition, the suit ought not to have been held maintainable.

4. Perusal of the judgment of the learned Trial Court indicates that there is no dispute with regard to the relationship between the parties. The suit is filed for the partition. In the written statement, the defendants have specifically averred that the suit properties are not ancestral properties. In view of the said statement, the question of oral partition as now claimed by the defendants does not arise.
5. With regard to the limitation, it is pertinent to note that in the written statement, the defendants have not challenged the maintainability of the suit on limitation. The limitation is sought to be contended by the defendants is not pure question of law and but mixed question of facts and law. In absence of the said issue being raised before the trial Court, now, it is not open for

the defendants to claim that the suit filed by the plaintiffs is barred by limitation.

6. With regard to the findings recorded by the learned Trial Court, the appellants have failed to show that the said findings of Trial Court as well as first appellate Court are contrary to the material on record. Appellants are unable to show any perversity in the findings recorded by both Courts below.
7. Under Section 100 of Code of Civil Procedure, the Second Appeal can be entertained only if the substantial question of law is involved therein. The judgments passed by both the Courts below and the material placed on record, do not indicate involvement of any substantial question of law in this appeal. Hence, Second Appeal stands dismissed. No order as to costs.
8. All pending Civil Applications also stand disposed of.

[R.M. JOSHI, J.]