

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

SECOND APPEAL NO. 275 OF 2021

1. Shri Yuvraj S/o Daliram Bante,
Aged 50 Years, Occ. Agriculturist
R/o New Futala Amravati Road,
Nagpur
2. Shri Sukhram Kawadu Bante,
Aged about 69 years, Occ. Agriculturist
R/o New Futala, Amravati Road,
Nagpur
3. Shri Antram S/o Kavadu Bante
Deceased through his legal heirs
 - a) Smt. Rupa Antram Bante,
Aged 42 years, Occ. Household
R/o New Futala, Amravati Road,
Nagpur
 - b) Master Hemant Antram Bante,
Age 13 years, Minor through
Smt. Rupa Antram Bante,
Age 42 years, Occ. Household,
R/o New Futala, Amravati Road,
Nagpur
4. Sau. Shobha Gajanan Dolas,
Age : 54 Years, Occ. : Agriculturist
R/o Pachkhedi, Tah. Kuhi, District
Nagpur
5. Navshindra Ramkrishna Tijare
Age 54 Years, Occ. Agriculturist
R/o Davdipar, Tah. and Dist. Nagpur
6. Shri Mansaram Kawdu Bante,
Age 64 Years, Occ. Service
R/o Dawada Tah Tumsar,
Dist. Bhandara

7. Shri Atmashil Daliram Bante,
Age 44 Yeas, Occ. Service R/o Near
Deshmukh Layout, Tah. and Dist.
Nagpur
8. Shri Pushpasheel Daliram Bante,
Age : 48 Years, Occ. Service R/o Near
Deshmukh Layout, Tah and District
Nagpur
9. Mrs. Zega Bhagwan Mane
(Deceased through legal heirs)
 - A] Shri Purushottam Bhagwan Mane,
Age : 49 years, Occ. Agriculturist
R/o Manegaon (Bazar), Tah
and District Bhandara.
 - B] Smt. Leelabai Wasudev Thawakar
Age : 44 Years, Occ. Agriculturist
R/o Manegaon (Bazar, Tah and
District Bhandara
 - C] Smt. Mukta Ashok Jagnade
Age: 39 Years, Occ. Agriculturist
R/o Manegaon (Bazar), Tah and
District Bhadara
 - D] Smt. Kaushalaya Harichandra
Halmare,
Age : 45 Years, Occ. Agriculturist,
R/o Gadegaon (Lahkhani) Tah. &
District Bhandara.
 - E] Shri Eknath Bhagwan Mane,
Age : 52 Years, Occ. Agriculturist
R/o Manegaon (Bazar), Tah. and
Dist. Bhandara.

Appellant/Counter-Claimant No.1 &
3-a & b to 9(A)to(E) through Power of
Attorney of Appellant No.2/Original
defendant no.2.

...Appellants

// VERSUS //

1. Shri Asaram Pitu Deshmukh
Age : 49 years, Occ. Agriculturist
R/o Marodi, Tah. Mauda, Dist. Nagpur
2. Shri Ratiram Kawdu Bante
(Dead through Legal Heirs)
 2. A) Sudhakar S/o Ratiram Bante,
Aged Major, Occ. Agriculturist
 2. B) Nomraj S/o Ratiram Bante,
Aged Major, Occ. Agriculturist
 2. C) Rambha Wd/o Ratiram Bante,
Aged Major, Occ. Agriculturist
 2. D) Ku. Chaya D/o Ratiram Bante,
Aged Major, Occ. Agriculturist
 2. E) Ku. Nisha D/o Ratiram Bante,
Aged Major, Occ. Agriculturist
All R/o Khokarla, Tah.Kuhi,
Dist. Nagpur

... Respondents

Shri R.G.Kavimandan, Advocate for the appellants.

Shri V.R.Baseshankar, Advocate for the respondent no.1.

CORAM : ANIL S. KILOR, J.**DATED : 3rd FEBRUARY, 2023.****ORAL JUDGMENT :**

The present appeal has been filed by the original defendants on dismissal of counter-claim on the ground of limitation. As such, the challenge is raised to the judgment and decree dated 9th February, 2021 passed by the learned District Judge-12, Nagpur in Regular Civil Appeal No. 6 of 2017 confirming the judgment and decree passed by the learned Civil Judge, Junior Division, Kuhi in Old Special Civil Suit No.977 of 2008, New Regular Civil Suit No. 41 of 2012, vide impugned judgment

and order dated 25th November, 2016, dismissing the counter claim of the defendants.

2. Brief facts are as under :-

(The parties are referred as per their status before the trial Court.)

The plaintiffs filed a suit for specific performance and for possession. The plaintiffs and defendant nos. 1 to 10 are close relatives. The defendant nos. 1 to 10 are the owners of the suit property which is ancestral property. It is the case of the plaintiffs that an agreement dated 14th August, 2005 was entered into between the plaintiffs and the defendants and thereby defendants agreed to sell the suit land to Rs. 2,30,625/- on the agreed terms and conditions and the possession was delivered to the plaintiffs on the date of the agreement. Accordingly, plaintiffs carried out the development and since then they are cultivating the land. However, the defendants were not ready and willing to perform the part of agreement and were intending to sell the suit land to the third party. Accordingly, the suit was filed.

3. The defendant nos. 1 to 3 contested the suit and denied the plaintiffs' case in toto, including execution of the agreement.

4. The defendant nos. 1 to 3 (a) and (b) and defendant nos. 6 to 9 and 10 filed a counter-claim at Exhibit 30 through power of attorney holder of defendant no. 1, for possession of the suit property.

5. Learned trial Court, after scrutinizing the oral as well as documentary evidence, dismissed the suit for specific performance and also dismissed the counter-claim on the point of limitation as well as on merit.

6. The judgment and decree passed by the learned Trial Court dated 25th November, 2016 was carried in appeal namely Regular Civil Appeal No. 6 of 2017 before the learned District Judge-12, Nagpur which came to be dismissed vide judgment and decree dated 9th February, 2021. The appeal of the plaintiffs was dismissed in default.

7. Both the Courts below have though dismissed the counter claim on limitation, they entered into the merits of the matter and gave findings on merit as well. Hence, this appeal.

8. I have heard the learned counsel for the respective parties.

9. This Court vide order dated 21st December, 2021 framed the following substantial questions of law:

i. Whether counter claim filed by appellants/original defendants in Regular Civil Suit No. 41/2012 is governed by Articles 64 and 65 of the Limitation Act and hence counter claim filed by the appellants/original defendants in Regular Civil Suit No. 41/2012 is well within limitation?

ii. Whether the counter claim filed by the appellants/original defendants in Regular Civil Suit No. 41/2012 is governed by Article 64 of

Limitation Act, 1963, which provides limitation for 12 years for suit for possession from the date of dispossession i.e. in the year 2008 and hence counter-claim filed by the Appellants Original Plaintiffs on 30/10/2012 is well within limitation?

10. Shri Kavimandan, learned counsel for the appellants points out that as per the case of the plaintiffs, they took possession in the year 2008 and as admittedly the counter claim was filed in the year 2012 i.e. on 30th August, 2012, it was within twelve years from the date of possession.

11. It is submitted that despite this fact both the Courts below held against the appellants on the point of limitation. It is submitted that though the learned trial Court did not frame the issue as regards limitation, the learned trial Court dealt with the same and dismissed the counter-claim on limitation as well as on merit.

12. On the other hand, Shri Baseshankar, learned counsel for the respondent no.1 supports the impugned order and decree and submits that as no substantial question of law is involved, the second appeal needs to be dismissed.

13. I have perused the record and the impugned judgment and order.

14. Admittedly, as per the pleadings of the plaintiffs, plaintiffs took possession of the suit property in the year 2008 and if the date of

filing of the counter claim is considered i.e. 30th August, 2012, the counter-claim was filed within 12 years. However, the learned lower Appellate Court has held that it was not filed within three years and therefore the order passed by the learned trial Court rejecting the counter-claim was upheld.

15. In case of Articles 64 and 65 of Limitation Act, in both the cases the limitation is twelve years. As per the Article 64, the 12 years period would be from the date of dispossession, whereas, in case under Article 65, twelve years would be when the possession of the defendants becomes adverse to the plaintiffs.

16. In the circumstances, I am of the opinion that the learned trial Court as well as learned First Appellate Court has committed error in holding that the counter-claim was barred by limitation.

17. The learned trial Court as well as learned Appellate Court has further committed error in entering into the merits and deciding the counter-claim into the merit when both the Courts below had arrived at a conclusion that the counter-claim was barred by limitation.

18. Thus, I have answered both the substantial question of law in above terms and pass the following order.

i. Second Appeal is partly allowed;

ii. The impugned judgment and order dated 9th February, 2021 passed by the District Judge-12, Nagpur in Regular Civil Appeal No. 6 of 2017 and judgment and decree dated 25th November, 2016 passed by the learned Civil Judge, Junior Division, Kuhi in Regular Civil Suit No. 41 of 2012 are hereby quashed and set aside to the extent of counter-claim.

iii. The counter-claim is remanded back to the trial Court to decide the same afresh after hearing both the parties as per the law.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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