

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

Second Appeal (SA) No. 45 of 2021

Suresh S/o Sadashiv Parate and others

Versus

Nilkhanta S/o Maroti Katole and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.G.Waghmare, Advocate for the appellants.

Shri A.M.Quazi, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 24th MARCH, 2023.

In the present second appeal, the judgment and decree dated 11th October, 2019 passed in Regular Civil Appeal No. 23 of 2016, dismissing the appeal and confirming the judgment and decree dated 21st June, 2016 passed in Regular Civil Suit No. 4 of 2014 dismissing the suit filed by the appellant for recovery of possession, declaration of ownership alongwith relief of mense profit in respect of suit property, is under challenge.

2. It is the case of the plaintiffs that they are the owners of the suit properties and there was a good relation between the plaintiffs and defendants during the period 1985 to 1988 and as the plaintiffs had weak financial position they were in need of money and the defendant No.1 agreed to give hand loan on condition

to execute the sale deeds of land as security. Therefore three sale-deeds were executed in respect of 16 acres of land as security in favour of the defendants.

3. It is the further case of the plaintiffs that after acquittal, in murder case they demanded to re-transfer the properties and on denial the suit was filed.

4. The defendants resisted the suit by filling written statement.

5. Learned trial Court after examining and scrutinizing the oral as well as documentary evidence passed the judgment and decree dated 21st June, 2016 dismissing the suit on merit as well as on the point of limitation.

6. The appellants feeling aggrieved by the same carried an appeal before the District Judge-11 Pusa vide Regular Civil Appeal No 23 of 2016, which came to be dismissed vide judgment and decree dated 11th October, 2019. The same is under challenge in the present appeal.

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

8. Shri Waghmare, learned counsel for the appellants submits that both the learned trial Courts below failed to calculate the period which was spent by the plaintiffs in pursuing the various revenue matters in

relation to the suit property during the period from 2004 to 2013. He therefore, submits that both the Courts below have committed error in not excluding the said period while calculating the period of limitation.

9. On the other hand Shri Quazi, learned counsel for the respondent points out that, the plaintiffs/appellants have not pleaded any dates in relation to their arrest or acquittal. It is pointed out that all the three sale-deeds were executed on 14th August, 1997 and the suit was filed after 26 years i.e. 15th January, 2014. He submits that in absence of sufficient pleading justifying the delay, the judgments and decrees passed by both the Courts below are just and proper.

10. In light of rival contentions of both the parties, I have perused the record and the impugned judgment and decrees.

11. The suit was filed by the plaintiffs admittedly for possession on the basis of ownership. As per Article 65 of Limitation Act, 1963, the period of limitation to institute a suit for recovery of possession of immovable property based on title is 12 years which begins to run when the possession of the defendants become adverse to plaintiff.

12. The exhibits 34 to 47 and 49 i.e. 7/12 extracts show that the defendant nos. 1 to 3 were

cultivating the suit property since the period 1987-88. Thus, the revenue record of the period immediately after the execution of sale-deeds on 14th August, 1987 shows that the defendants were in possession of the suit property.

13. The plaintiffs have not pleaded any facts regarding their period in jail, the date of their acquittal or release from the jail.

14. In the circumstances, even if the case of the plaintiffs is accepted that they were pursuing the some revenue matters before the competent authority during the period from 2004 to 2013, still the period of 17 years lapsed in between 1987 to 2004 which has not been explained.

15. Thus, considering the fact that the defendants are in possession of the suit property since 1987 to 1988 and suit was filed on 15th January, 2014, both the Courts below have rightly held that the suit is barred by limitation. Hence, as there is no perversity in the said findings and as no substantial questions of law is involved in this appeal. The appeal is dismissed.

[ANIL S. KILOR, J.]

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