



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.183 OF 2024

Yuvraj Sandu Mahajan

...Appellant

Versus

1. Babulal Damu Patil (Deceased),
Through L.Rs.
 - a. Bebabai Baburao Patil,
 - b. Smt. Bebabai Baburao Patil,
 - c. Dilip Baburao Patil,
 - d. Sanjay Baburao Patil,
 - e. Alkabai Narayan Patil,
 - f. Mangalabai Bharat Patil
2. Vividh Karyakari Sahakari Society Ltd.,
3. Jivram Sandu Mahajan,
4. Gayabai Zagadu Patil,
5. Malanbai Shankar Patil.

...Respondents

Adv. Sanjay S. Dudhane h/f. Adv. V. R. Dhorde for Appellant.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 28th NOVEMBER 2024.

PC.:-

1. The Appellant-Original Plaintiff impugns judgment and decree dated 27th September 2021 passed by learned District Judge, Jalgaon in Regular Civil Appeal No.73 of 2016 as well as the judgment

and decree dated 2nd March 2016 passed by learned Civil Judge, Junior Division, Pachora in Regular Civil Suit No.74 of 2001. (The parties are referred hereinafter as per original status in the suit).

2. It is a case of the Appellant-Plaintiff that suit land bearing Block Nos.134 and 139 along with Grampanchayat House Nos.30 and 31 were owned by Keshav Hiraji Mahajan, thereafter it was inherited by his wife-Bhagabai Keshav Mahajan. She had obtained loan from the Defendant No.2 Society. She bequeathed aforesaid property to Plaintiff under a Will. The Defendant No.2-Society auctioned suit property without following due process of law, alleging default in repayment of loan by Bhagabai . The Defendant No.1 has been illegally shown as purchaser of property vide auction dated 19th May 1980. The Plaintiff further contended that in Regular Civil Appeal No.163 of 1985, Will executed by Bhagabai bequeathing property in his favor has been approved. The said decree has attended the finality.

3. The Defendants refuted Plaintiff's claim contending that in fact decree passed in Regular Civil Suit No.163 of 1985 endorsed auction of suit property admeasuring 86 R and consequential ownership of Babulal Damu Patil. The Appellant-Plaintiff had filed Regular Civil Suit No.521 of 1980 in the Court of Civil Judge, Senior Division, Jalgaon assailing auction process and consequential sale of property in favour of Babulal Damu Patil, however, that suit was

withdrawn. Therefore according to defendants present is suit is barred by principles of Res-judicata. The auction sale of 1980 is sought to be challenged by filing suit in the year 2001, hence, suit is hopelessly barred by limitation.

4. The Trial recorded finding that Plaintiff failed to prove his ownership based on Will executed by Bhagabai or prove that auction of the property by Defendant No.2 in favour of Defendant No.1 is illegal. The Trial Court concluded that suit is barred by principles of res-judicata and provisions of limitation Act.

5. The Appellate Court also concurred with finding of trial court and held that auction by Defendant No.2 in favour of Defendant No.1 is legal and he acquired ownership of suit property. The Appellate Court further endorsed finding of trial court as regards to bar of res-judicata and limitation of suit.

6. Mr. Sanjay Dudhane, learned Advocate appearing for the Appellant / Plaintiff vehemently submits that in Regular Civil Suit No.163 of 1985 filed by maternal aunt of plaintiff, seeking relief of partition of suit property, plaintiff was added as Defendant. The Will deed executed by Bhagabai bequeathing suit property to plaintiff has been approved by court. He would further submit that auction sale in

favour of Defendant No.1 was illegal. Appellate Court has erroneously decided issues of limitation and res-judicata.

7. Apparently suit property was auctioned on 19th May 1980 by Defendant No.2-Vividh Karyakari Coop. Society Ltd, the sale become absolute on 12th September 1980 in favour of Defendant No.1. The sale certificate shows that the notices for delivery of possession were served upon Plaintiff and his family members. The Plaintiff has assailed auction proceeding in Regular Civil Suit No.521 of 1980. Later on, he withdrew suit. Pertinently recovery certificate issued U/s. 101 against Bhagabai was never subjected to challenge under provisions of Maharashtra Cooperative Societies Act, 1960.

8. One more suit, i.e., R.C.S. No.163 of 1985 was filed by the daughters of Bhagabai against Plaintiff and Defendant No.1 (Auction Purchaser) seeking relief of partition. The present suit property was also subject matter in that suit. The challenge was raised to the Will dated 3rd January 1984 executed by Bhagabai in favour of the Plaintiff. The Defendant No.1, auction purchaser claimed his ownership on the basis of auction sale. Consequently, the issue was framed "As to whether Defendant No.4 (auction purchaser) proved that he become owner of 86 R land out of Gat No.134 through auction dated 12th November 1980?". The said issue was answered affirmative. In R.C.A. No.155 of 1999 filed against decree in R.C.S. No.163 of 1985,

Plaintiff's ownership based on Will is approved but excluding 86 R land i.e. auctioned property. It is therefore, clear that issue of ownership of Defendant No.1 in respect of 86 R land auction purchased by him has attained finality as per decree in R.C.S. No.163 of 1985 which is confirmed in R.C.A. No.155 of 1999. Therefore, Plaintiff has no right to claim further relief in respect of said property in view of bar of res-judicata. Both fact finding Courts have concurrently held that suit is barred U/s. 11 of CPC, no fault can be found with such findings.

9. The second aspect of the matter is that present suit has been instituted in the year 2001 reiterating contentions and challenge to the auction process by which Defendant No.1 acquired the ownership. Admittedly, Defendant No.1 has been put into possession of suit property in year 1980 in pursuance of sale certificate dated 12th September 1980. Therefore, the present suit filed in the year 2001 seeking declaration and possession is hopelessly barred by limitation. The Plaintiff was well aware about exclusion of his right and conferment of ownership and possession in favour of defendant No 1 based on decisions in the previous litigation. The plaintiff cannot seek any more declaration against auction process and challenge acquisition of title and ownership by defendant No. 1 after 21 years. Even going by article 58 or 113 of limitation act suit for declaration has to be instituted within 3 years. The cause of action to seek such declaration

first arose to plaintiff in year 1980 only. Hence suit is hopelessly barred by limitation.

10. Therefore, the concurrent findings recorded by the Courts below on the point of limitation and res-judicata does not require interference. No substantial question of law arises for consideration in the present second appeal.

11. Second appeal stands dismissed.

(S. G. CHAPALGAONKAR, J.)