



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 188 OF 2018

Abdul Latif Nadimulla Duppatgar
and Others.

...Appellants.

Versus

Laxmibai Subhannath Kasar
and Others.

...Respondents.

Mr. Milind R. Deshpande for the Appellant.

Coram : Sharmila U. Deshmukh, J.

Date : April 24, 2024.

P. C. :

1. Heard.
2. Being dissatisfied by the judgment dated 16th November 2017 dismissing the appeal and confirming the judgment and decree passed by the trial Court decreeing the suit and directing the Defendants to hand over vacant possession by removing encroachment over 0.70 X 12.20 meter south-north direction eastern side portion over the suit property shown on map, to the Plaintiffs, the original Defendant is before this Court.
3. Learned counsel appearing for the Appellant submits that the

substantial question of law that arises in the present second appeal is the question of limitation. He submits that the plaintiff is the owner of CTS No.9546 which has been purchased in the year 1999 after carrying out measurement. He submits that the Defendants are the owners of CTS No.9521 and the construction was carried out in the year 2002 by the Defendants. He submits that the suit filed in the year 2012 is barred by limitation as the same ought to have been filed upon the Plaintiff purchasing property in the year 1999 after carrying out measurement.

4. Considered the submissions and perused the record.

5. The suit has been filed seeking possession of the encroached portion from the Defendants. The case of the plaintiff is that the Defendant no.1 has encroached upon the portion of the suit property owned by the Plaintiff. As construction was carried out by the Defendant No.1 causing encroachment on the property of the Plaintiff, the Plaintiff applied for measurement and the measurement disclosed the extent of encroachment by the Defendants.

6. The trial Court upon consideration of the evidence on record has held that the measurement carried out on 25th July 2012 by the City Survey Officer shows encroachment. On the issue of limitation

the trial Court has held that the suit is filed for possession on the basis of title, as such Article 65 of the Limitation Act, 1963 will apply and as the construction is carried out in the year 2002 the suit is within limitation. The said finding on the aspect of limitation has been confirmed by the appellate Court in the impugned judgment.

7. The ownership of the suit property, i.e., CTS No. 9546 of the Plaintiff is not disputed. Article 65 of the Limitation Act, 1963 prescribes limitation of 12 years for filing of the suit for possession of immovable property or any interest therein based on title and the third column of Article 65 provides that the period of limitation begins to run when the possession of Defendant becomes adverse to the Plaintiff. Although the suit property was purchased in the year 1999, the same did not give rise to the cause of action as it is only when the construction was carried out in the year 2002 by encroaching upon the the property belonging to the Plaintiff, the cause of action for filing the suit arose. As the construction was carried out in the year 2002, the starting point of limitation was 2002 and thus calculating period of 12 years as prescribed by Article 65, the suit filed in the year 2012 is within limitation. In the present suit, the limitation is a mixed question of law and fact and the trial Court and the appellate Court on the basis of evidence on record have concluded that the suit is within

limitation in view of the fact that the construction was carried out in the year 2002.

8. In the light of discussion above, no substantial question of law arises as there is no perversity in the findings rendered by the Courts below. Resultantly, second appeal stands dismissed.

9. In view of the disposal of Second Appeal, nothing survives for consideration in the pending civil/interim application and the same stand disposed of.

[Sharmila U. Deshmukh, J.]