

18 January 2024.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 732 OF 2022
WITH
INTERIM APPLICATION NO. 20509 OF 2022**

Yamuna Narayan Raut (deceased)

Naresh Narayan Raut and Ors.

...Appellants

V/s.

1. Chandrakant Narayan Raut

(since deceased through legal heirs

and representative) 1/1. Leelavati

Chandrakant Raut (widow) and Ors.

...Respondents

Mr. Satyajeet Joshi a/w. Mr. Chinmay Joshi, for the Appellant.

CORAM : SANDEEP V. MARNE, J.

DATED :18 JANUARY 2024.

ORAL ORDER :

1. By this Appeal, Appellants challenge Judgment and Order dated 21 February 2022 passed by the District Judge, Palghar allowing Regular Civil Appeal No. 36 of 2012 and setting aside the Judgment and Decree passed by the Civil Judge Junior

18 January 2024.

Division, Palghar in Regular Civil Suit No. 9 of 2006. The first Appellate Court has decreed the suit by declaring that the Plaintiff is entitled to 1/7th share in the suit property and for separate possession.

2. Plaintiff instituted Regular Civil Suit No. 9 of 2006 in the Court of Civil Judge Junior Division for partition and declaration of 1/7th share in the property. The Trial Court held that the suit property is ancestral property, and that the Plaintiff is entitled to joint share in the suit property. However, the Trial Court has proceeded to dismiss the suit by holding that the same is barred under Article 110 of the Limitation Act, 1963 as Plaintiff failed to enforce his right within the period of limitation.

3. Aggrieved by the Decree dated 4 May 2012, Plaintiff filed Regular Civil Appeal No. 36 of 2012 before the District Court, Palghar, which has allowed the Appeal reversing the finding of the Trial Court on the issue of limitation and has decreed the Suit by holding that Plaintiff is entitled to 1/7th share in the property. Aggrieved by the decision of the first Appellate Court, the Appellants have filed the present Appeal.

4. I have heard Mr. Satyajit Joshi, the learned counsel appearing for the Appellants. He would submit that under Article 110 of the Limitation Act, 1963, the suit for partition is required to be filed within 12 years of exclusion from joint family

18 January 2024.

property being made known to the Plaintiff. He would submit that when Defendant's father Narayan Raut had issued public notice informing objections for sale of land bearing Survey No. 826 (not forming part of suit property). Plaintiff objected to the said Notice and reply was given to the Plaintiff by Advocate of Narayan Raut on 12 April 1990 clearly stating therein that Plaintiff was not a part of joint family as his mother had left Narayan long back and that Plaintiff never treated Narayan as his father. According to Mr. Joshi, the said reply dated 12 April 1990 constitutes knowledge on the part of the Plaintiff about exclusion of joint family property. That therefore suit for claiming share in the property ought to have been filed within 12 years of reply dated 12 April 1990. Since the suit for partition was filed on 20 January 2006, the same is clearly barred by limitation under Article 110. Alternatively, Mr. Joshi would rely upon Article 65 of the Limitation Act in support of his contention that suit for possession of immovable property cannot be filed after 12 years of possession becoming adverse. Mr. Joshi would also question the correctness of the finding of the Trial Court and the first Appellate Court in decreeing the suit only the basis of DNA Test in absence of any concrete evidence of Plaintiff being son of Narayan.

5. I have considered the submissions canvassed by Mr. Joshi. In my view, the trial Court had committed a gross error in

18 January 2024.

dismissing the suit of the Plaintiff by relying upon Article 110 of the Limitation Act. Article 110 of the Limitation Act reads thus :

<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
110. By a person excluded from a joint family property to enforce a right to share therein	Twelve years	When the exclusion becomes known to the Plaintiff.

6. In my view, Article 110 applies in a case where a person is excluded from 'joint family property'. In the present case, reliance is placed by the Appellants on reply dated 12 April 1990 by which connection between the Plaintiff and Defendant's family was denied. Thus if the reply dated 12 April, 1990 was to be read as exclusion of Plaintiff, such exclusion, at the highest, would be from 'joint family' and not from 'joint family property'. In fact, if relationship with Defendants' family was denied, there is no question of 'exclusion'. Also, mere denial of relationship of Plaintiff with the joint family would not amount to exclusion from joint family property within the meaning of Article 110 of the Limitation Act. In my view therefore Article 110 has absolutely no application to the present case. The first Appellate Court has rightly corrected the gross error committed by the Trial Court in dismissing the suit based on Article 110 of the Limitation Act.

18 January 2024.

6. Reliance of Mr. Joshi on Article 65 of the Limitation Act also does not cut any ice. Article 65 applies to suit for possession of immovable property or any interest therein based on title. The suit filed by Plaintiff is for partition claiming 1/7th joint share in the property. The relief of separate possession is a consequential relief squarely hinging on the relief of partition. Therefore, Article 65 would not apply to the suit for partition.

7. The Appellants' contention about error committed by the first Appellate Court in presuming Plaintiff to be part of joint family cannot be entertained in the present Appeal. Perusal of the order passed by the Trial Court would indicate that the Trial Court held Plaintiff to be a part of joint family. It also held that he has share in the joint family. These findings of the Trial Court were not challenged by the Appellants before the first Appellate Court. When Plaintiff filed Appeal before the District Court, Appellants did not file their cross-objections in that Appeal. Therefore, it is too late in a day for the Appellants to question the correctness of the findings of the Trial Court about Plaintiff's relation with the joint family.

8. After considering the overall conspectus of the case, I am of the view that no substantial question of law is involved in the present Appeal. The Appeal is accordingly **rejected**.

18 January 2024.

9. With the disposal of the Appeal, the Interim Application does not survive and the same is also disposed of.

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2024.01.24
16:03:42
+0530

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.