

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.68 OF 2024
WITH
INTERIM APPLICATION NO.947 OF 2024
IN
SECOND APPEAL NO.68 OF 2024**

Genba Rambhau Limbhore & Ors.

....Appellants/Applicants

V/S

Chandrabhagabai Tukaram Walhekar & Ors.

....Respondents

Mr. Kalpesh Patil i/b Mr. Pratik P. Deshmukh, Mr. Nandan Gaval *for the Appellants/Applicants.*

Mr. Yashodeep Deshmukh i/b Mr. Pradip Patil *for Respondent Nos.1 to 4.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 10 APRIL 2024.**

P.C.:

1 By this Appeal, the Appellants challenge judgment and decree dated 8 September 2023 passed by District Judge-21, Pune, in Regular Civil Appeal No.271 of 2018, by which the First Appellate Court has allowed the Appeal filed by the Respondents and thus reversed the decree dated 27 April 2018 passed in Regular Civil Suit No.216 of 2006 passed by the Joint Civil Judge Junior Division, Saswad, Pune. The First Appellate Court has decreed the suit and has directed that Plaintiffs and Defendant Nos.1 to 6 are entitled to

partition and separate possession to the extent of 1/7th share and Defendant Nos.2A and 2B and Defendant No.5 to the extent of 1/21th share in the suit properties.

2 The suit filed by the Plaintiffs was dismissed by the Trial Court on the ground of limitation holding that Plaintiffs were denied share in the suit property on 24 December 1993 and that therefore the suit filed by them on 10 October 2006 was barred by limitation. The Trial Court relied upon the admission given by the Plaintiff No.3 that the Plaintiffs were thrown out of house on 24 December 1993 stating that they had no relationship with the suit properties and that the sisters had stopped visiting the house of the brothers after 24 December 1993. This admission is treated by the Trial Court as denial of share in the suit property for the purpose of application of Article 110 of the Limitation Act.

3 In my view, the Trial Court has committed a grave error in treating the said admission as 'exclusion' of share in the suit property by the Defendants-brothers. What is used in Article 110 of the Limitation Act is not the term 'denial' but what is used is the term 'exclusion'. What may have happened on 24 December 1993 is denial of any right by the Defendants-brothers to the Plaintiffs-sisters in the suit property. Such 'denial' cannot be confused with the concept of 'exclusion'. Thus for the purpose of proving exclusion from suit properties, it was incumbent for the Defendants-brothers to prove that a partition took place on 24 December 1993 in which Plaintiffs-sisters were denied share. It is only when a partition is effected where the member of the

family is excluded from such partition and such exclusion becomes known to him, that the period of limitation begins to run from the date of acquisition of knowledge about exclusion by such family member. In the present case, the Defendants-brothers attempted to contend that partition of the suit property has taken place in the year 1984. However the Trial Court did not compute the period of limitation from the year 1984. In fact the theory of partition being effected in 1984 is neither accepted by the Trial Court nor by the First Appellate Court. But the Trial Court erroneously assumed exclusion of share to Plaintiffs-sisters on 24 December 1993 in absence of any assertion to the effect that any partition took place between family members on 24 December 1993. In my view therefore time for computation of limitation did not start to run from 24 December 1993. The Trial Court had committed an error in dismissing the suit on the ground of limitation. The First Appellate Court has rightly held that the suit of the Plaintiffs was within limitation.

4 The learned counsel appearing for the Appellant has sought to rely upon the judgment of this court in **Chhabubhai Balkrishna Sutar vs Panchan Ladga Savala**, (2010) 5 Mah LJ 885 in support of his contention that the period of limitation for filing the suit of partition is required to be computed from the date of ouster of the Defendants from suit property. Reliance is placed on paragraph 17 of the judgment in which this Court has held as under:

"17 Even assuming the Suit is confined only to the aforesaid prayers, it would still be hit by limitation. Under Article 110 of the Limitation Act, a person who is excluded from a share in a joint family property must file a Suit

within 12 years from the exclusion. The witness for the plaintiffs has deposed that the plaintiffs were ousted from the suit property in 1954. Therefore, it was necessary for the plaintiffs to file the Suit within 12 years from their ouster from the suit property. Admittedly, this has not been done. It has been submitted by the learned Advocate for the plaintiffs that Article 65 of the Limitation Act is attracted in the present case and not Articles 56 to 58. He submits that if both the Courts below had considered Article 65, it would be obvious that the Suit has been filed within the period of limitation. He has further submitted that the defendants have not pleaded nor proved adverse possession on a particular date and therefore the plaintiffs are entitled to a declaration as well as partition of the suit property."

5 In my view, judgment in **Chhabubhai Balkrishna Sutar** (supra) could have no application to the facts and circumstances of the present case. Firstly, there was an admission in that case that the Plaintiffs there in were ousted from the suit property in 1954. The manner of such ouster is not clear from the facts recorded in the judgment. However, it appears that there was exclusion of share in the partition property to the Plaintiffs and therefore this Court held that the suit for partition was required to be filed within a period of 12 years from such exclusion/ouster. In the present case, there is nothing to indicate that any ouster took place in the year 1993 by effecting partition between other brothers. The judgment in **Chhabubhai Balkrishna Sutar** (supra) therefore would have no application to the present case.

6 Considering the overall conspectus of the case, I am of the view that no question of law, much less any substantial question of law, is involved in the Appeal. The Second Appeal is **rejected**.

7 With rejection of the Second Appeal, Interim Application taken out for stay does not survive. The same also stands disposed of.

(SANDEEP V. MARNE, J.)

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